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ABSTRACT

The handbook is designed to clarify Pennsylvania and federal requirements regarding the role of the hearing officer in due process procedures for handicapped and gifted students. The statutory and regulatory bases for hearing officers' responsibility are cited in an initial section. The following topics are then addressed (sample subtopics in parentheses): general guidelines for a due process hearing (questions of state law); preevaluation hearings; hearings about past evaluations; individualized education program hearings; program placement hearings; hearings for children below school age; administrative res judicata; the decision and recommendations (least restrictive environment, trial placement, placement in other than public school program); evidence and testimony (burden of proof, medical evidence); suggested format for hearing officer decision; mailing the decision; implementing the decision; appeal procedures; and show cause hearings (approved private school status). Six appendixes include sample cover letters and sequence of events charts. Extensive reference documents include a directory of approved private schools and state special education regulations. (CL)

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HEARING OFFICER HANDBOOK

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INTRODUCTION

The Commonwealth of Pennsylvania has implemented Right to Education through the Consent Agreement (**Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania,** 343 F. Supp. 279 (1972)). The Consent Agreement requires that all children who are mentally retarded or thought to be mentally retarded have access to a free public education and the opportunity for a hearing on the appropriateness of a proposed educational placement.

On June 3, 1975 the State Board of Education adopted regulations extending Right to Education and due process procedures to all other handicapped school aged persons. (22 Pa. Code. Section 13.1 *et seq.)* Due process for the gifted and talented became effective July 1, 1976 (22 Pa. Code Section 13.21.)

On October 1, 1977 Public Law 94-142 became effective. This federal law requires due process procedures to be followed concerning the identification, evaluation, placement and program of handicapped students. Pennsylvania has adopted Standards for Special Education (Chapter 341, 22 Pa. Code) which include the requirements of P.L. 94-142.

The State Board of Education adopted Standards for Approved Private Schools (Chapter 181, 22 Pa. Code) which provide for a hearing at which the parents must show cause as to why the application for enrollment of a child in an approved private school should be approved. These Standards also provide the opportunity for a private school to request a hearing on their approval status.

Hearing officers are assigned as designees of the Secretary of Education to conduct the hearings provided for in the regulations and render decisions.

It is the intent of this handbook to clarify the role and responsibility of the hearing officer and to explain the framework within which the hearing officers base their decisions and recommendations.

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I. GENERAL AUTHORITY AND RESPONSIBILITY OF HEARING OFFICERS

A special education hearing is a type of "administrative hearing." That is to say, it is a hearing before a state agency or governmental body. Therefore, a special education hearing is governed by the same general rules of procedure that are applicable to all administrative hearings.

At a special education hearing, a hearing officer sits as a delegate of the Secretary of Education. It is therefore the responsibility of the hearing officer, on behalf of the Secretary, to hear testimony and receive documentary evidence from the parties to such a hearing. The parties at a special education "due process" hearing conducted pursuant to 22 Pa. Code §13.32 are generally the parents, as petitioners, and the school district and/or intermediate unit, as respondents. However, in certain circumstances, the school district/IU may be the petitioner and the parents the respondent.

A hearing officer at an administrative hearing is charged with a duty of insuring that: the hearing is conducted in an orderly and concise fashion, parties are able to present witnesses who have relevant testimony, relevant evidence is introduced into the record, and rulings are made on objections posed by parties during the course of the hearing. The hearing officer assumes these duties in order to assure that parties are afforded procedural due process and to assure that a clear and concise record (transcripts plus exhibits) of the hearing is created. A transcript which is clear and intelligible is essential because such a transcript serves as an aid to the hearing officer in the writing of his/her report and, should an appeal be taken from the report of the hearing officer, serves as the basis for the Secretary's ruling on the merits of the appeal.

A. Powers of a Hearing Officer

The general authority and responsibility of a hearing officer at an administrative hearing is set forth in the provisions of the general rules of administrative practice and procedure. 1 Pa. Code §31.1 *et seq.*. The general authority of a hearing officer is as follows:

1. *To hold informal conferences between the parties in order to adjust, settle or expedite matters expected to be raised at the hearing itself.* A conference may also be held off the record, during the course of the hearing if the hearing officer feels that an informal conference would be fruitful. 1 Pa. Code §35.111. Conferences are held at the discretion of the hearing officer.

2. *To regulate the course of the hearing*, including the scheduling of the hearing, recessing of the hearing, reconvening of the hearing, and final adjournment of the

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hearing. This means that the hearing officer may during the course of the hearing entertain motions by either party to adjourn or recess the hearing. A hearing officer may, however, decide on his own that because of the possibility of settlement between the parties, the need for additional evaluations, the need for revision of the IEP or time restrictions a hearing should be adjourned. The hearing officer also may decide that a short break or recess during the hearing should be taken. 1 Pa. Code §§35.187, 35.189.

3. To swear in witnesses. A hearing officer may swear in a witness by either having the witness swear that the testimony that he is about to give is true and correct or affirm that the testimony that he is about to give is true and correct. A hearing officer may also ask the stenographer to administer the oath if the stenographer is qualified to do so. 1 Pa. Code §35.187(2). It is advisable to swear in all witnesses at one time prior to the taking of any testimony.

4. To receive evidence, hear objections to evidence, and listen to statements as to the relevancy of evidence (offers of proof). 1 Pa. Code §35.187(4).

5. To issue subpoenas. Subpoenas are orders by the hearing officers for the attendance of witnesses or the production of documentary evidence. (A subpoena form is included herein as Appendix "D".) A subpoena should be granted only when:

   a. the witness can give testimony which is, or the documents are, relevant to material issues at the hearing;

   b. the witness has refused to attend the hearing or a party or witness has refused to produce relevant documents; and

   c. the party requesting the subpoena establishes the above to the satisfaction of the hearing officer.

6. To take depositions or to order depositions to be taken. A deposition is the testimony of a witness taken outside of a hearing. A deposition may be taken if a witness cannot be present at the hearing itself. The representatives of both parties should attend the deposition to examine and crossexamine the witness. The deposition should be transcribed and copies thereof provided to the hearing officer and both representatives. (1 Pa. Code §35.187(5)).

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7. To rule upon procedural matters which arise during the course of the hearing. Such procedural matters might include the order in which witnesses are presented, questions of relevancy regarding testimony or exhibits and the numbering of exhibits presented into evidence. It may also include requests by parties for adjournments or recesses, or motions by parties for dismissal of the proceedings. (1 Pa. Code §35.187).

8. To insure that witnesses, lawyers, parties, observers, or representatives do not become disruptive during the course of hearing. A disruptive witness, lawyer, party, etc., is said to be "in contempt" and may, at the discretion of the hearing officer, be ejected from the hearing. (1 Pa. Code §31.27) If the hearing officer feels that the witness has become disruptive or unmanageable he may, at his discretion, adjourn the hearing and suspend proceedings. (1 Pa. Code §35.189) If a hearing officer confirms that a witness, party, lawyer, etc. is being disruptive or disrespectful to him/her, he/she should warn that person to cease this conduct. If the conduct does not stop, the hearing officer should note on the record the nature of the conduct and either eject the disruptive party or suspend the proceedings entirely. The hearing officer may then submit a special report to the Secretary of Education with regard to the disruptive or disrespectful party. The Secretary may then request a court of appropriate jurisdiction to hold the party in contempt and mete out appropriate punishment.

B. Informal Contact

The hearing officer should not discuss the case with either party before or after the hearing. If the hearing officer receives any unsolicited written communication, report, evaluation or similar document about the case, he/she should return it immediately, noting that it is improper communication.

A hearing officer may discuss a case with another hearing officer who is not involved in the case. Such discussion should be limited to hypothetical or procedural questions. He/she may also call the Bureau of Special Education or the Legal Office of the Department of Education for information about school laws and regulations.

C. Grounds for Disqualification

A hearing officer should disqualify himself or may be disqualified to sit at a hearing when the officer:

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1. has a financial interest in the present hearing; e.g., is owner of or partner in an approved private school which may be considered for the child's placement; or

2. has an evidentiary conflict because of his/her prior involvement with the child; e.g., previously evaluated the child.

II. GENERAL GUIDELINES FOR A "DUE PROCESS" HEARING

A. Opening Statements by the Hearing Officer

The hearing officer shall:

1. Introduce him/herself.

2. State the purpose of the hearing, e.g. for the presentation of evidence to determine the appropriate special education program for the child.

3. State whether the hearing is open or closed, as requested by the parent. One page of the notice sent to the parents gives a definition of open/closed hearings and gives the parents the opportunity to select that which they prefer.

4. Have each person, including observers, state for the record their name and position.

5. Inform the parties of the right to appeal to the Secretary of Education within 15 days of the party's receipt of the hearing report and subsequently to the courts within 30 days of the issuance of the Secretary's Appeal Opinion.

6. Inform the parents of their right to a free transcript of the hearing if they so desire.

7. Swear in all witnesses (a certified stenographer may also do this).

B. Opening Statements by the Parties

Each party shall present an opening statement which shall contain a concise description of the issues to be put before the hearing officer. The issues should be presented in terms of the child's exceptionality, program of special education or individual education program (IEP). Parents or their representative should state why they asked for the hearing, and what areas of disagreement exist between themselves and the district/IU which the parents want the hearing officer to resolve. (If, for example, the IEP is at issue, the parents should point to those areas of the IEP that they disagree with.) The district/IU should then respond to the parents' opening statement.

The issues, as delineated by the parties, will be used by the hearing officer to control and direct the scope of the hearing. The opening statements should not be more than ten minutes in length.

If, during the statement of issues, the hearing officer determines that a stated issue is outside the scope of his/her authority to decide the hearing officer shall so state. Objection to this ruling shall be entertained. However, if the objection is denied the matter may not be pursued further through the introduction of testimony.

The presentation of evidence concerning other issues or evidence irrelevant to the stated issues shall be within the sound discretion of the hearing officer. The hearing officer may request an "offer of proof" from the party or the party's representative prior to ruling on the admissibility of the evidence.

The opening statement may also contain a brief summary of the facts which each party intends to present at the hearing.

The parties should be reminded that the opening statement is not evidence. That is, the hearing officer may not base a decision on remarks made in the opening statements. However, the issues presented in the opening statements will define the scope of the hearing and give the hearing officer a better idea of what each side is trying to prove.

C. Order of Presentation

- Opening statements.
- School district/IU presents evidence concerning its proposal for the child.
- Parent presents evidence of why school district/IU proposal is inappropriate or inadequate.
- Parent presents evidence on what they believe to be appropriate.

D. Parties at Hearings

The following are the only parties at the hearing:

1. The school district and/or IU.

2. The parent or guardian of the child and/or the child in certain instances.

The following are not parties at the hearing:

1. Teachers, psychologists, and other witnesses.

2. Unions or union representatives (although union representatives may accompany teachers at open hearings to advise them of their contract rights).

3. Representatives of an advocacy group; e.g. PARC, DDAN, PAGE, etc. (although the advocacy group representative may act as a representative of the parent or guardian on behalf of the child).

E. Questioning Witnesses

Only the representative for a party, if the party is represented by legal or other counsel, and the hearing officer have the right to question witnesses concerning any issue relevant and material to the particular hearing. The hearing officer may ask questions at any time in order to extract as much information from the witness as is deemed necessary to make a decision. However, a party who is not represented by counsel, or one who has his/her counsel's permission, may also question witnesses.

In those cases where a party is not represented by legal or other counsel, the party, as his/her own representative, must not commingle the role of representative and witness. In other words, when presenting the case and questioning witnesses the party must limit himself/herself to questioning and not make evidentiary statements. However, if the party also wishes to testify he/she should do so at a set point in the proceedings. Thereafter, the representative for the other party must be permitted the opportunity for cross-examination.

In general, when a witness for one party has finished giving testimony, the other party should be given an opportunity to question (cross-examine) the witness immediately. After this cross-examination, the first party may re-examine the witness to further explain any information brought out in cross-examination. This procedure will put all related matters in one part of the transcript.

Where the questioning and testimony of a witness are irrelevant to the hearing issues the hearing officer has the authority to stop irrelevant questioning/testimony and should direct the attorney and/or witness to limit testimony and questioning to the hearing issues. The hearing officer may also direct an evasive witness to answer a question.

F. Legal Counsel for Witnesses

Any witness has the right to have an attorney present to protect his/her rights. This is true even at a closed hearing. Such an attorney may advise his or her client when the client is being questioned. However, an attorney who represents a witness and not a party has no right to question witnesses, to present evidence, to object to testimony or to speak up at any time at the hearing. His or her words may only be directed to his or her client.

G. Closed Hearings

If the parent requests a closed hearing in order to exclude the general public, the parent may, nevertheless, request that certain observers or friends be permitted to remain present.

The parties and their representatives and witnesses and their legal counsel may be present at a closed hearing. (Note that the hearing officer's report of an open hearing may be made public, however, the report of a closed hearing may not.)

H. Closing Statements

After all testimony has been presented the parties should be given the opportunity to make closing statements to sum up what they feel the evidence has shown. These closing statements by the parties should be limited to a summary of the case presented on the record and the hearing officer should prohibit any comments or arguments not so limited. As with opening statements, these remarks are not evidence.

The hearing officer's closing statement should show that the appeal procedures have been distributed to the parties and that the hearing officer has copies of all documents introduced as evidence. Copies of these documents should be given to the stenographer and should be attached to the transcript when forwarded to the hearing officer.

I. Nonappearance

If one of the parties is not present at the hearing, and yet, that party had ample notification of the hearing and did not request a postponement, the hearing should proceed unless the party is contacted and desires to attend.

If the absent party does not express a desire to attend testimony should be entered into the record concerning the absent party's notice of the hearing. The hearing should be conducted as if the parent had requested a closed hearing. The hearing officer will then make his/her decision based upon the evidence which was presented at the hearing. A copy of the decision should be sent to the party by regular as well as certified mail. By not attending the hearing the absent party waives his/her right to present evidence and to contest the evidence of the other party.

The hearing officer may, however, on his/her own motion, or for good cause shown, reconvene the hearing at a later date at which the absent party may present evidence and cross-examine witnesses who testified for the other party.

J. Request for Postponement at the Hearing

If one of the parties requests that the hearing be postponed because of insufficient preparation time, the hearing officer must determine if the request is valid. If the hearing officer decides that the requesting party did not have sufficient time to review the child's records, the hearing officer may listen to as much evidence as possible and continue the hearing at a later date, or may adjourn entirely and begin anew at another date.

If one of the parties requests a postponement because of the unforeseen absence of a witness the hearing officer should, nevertheless, conduct the hearing without that witness. The hearing officer may then reschedule the hearing at a later date in order to take testimony from the witness. However, the hearing officer should secure an offer of proof on the record as to the relevance and materiality of the proposed testimony of the absent witness.

If one of the parties is not represented by legal counsel and yet does not want to waive that right then the hearing officer shall postpone the hearing in order to allow a reasonable time for that party to obtain counsel.

K. Questions of State Law

For the purpose of a "due process" (administrative) hearing, Pennsylvania statutes, regulations, and standards apply. Therefore, arguments based solely upon federal law are irrelevant at the hearing.

In addition, it must be assumed that state law (statutes, regulations and standards) is valid and constitutional. The hearing officer is, therefore, bound by state law and has no authority to question its validity or constitutionality.

III. PRE-EVALUATION HEARINGS

Pre-evaluation hearings are available prior to the initial individual evaluation of a thought to be exceptional child for special education by a school district/IU.* Prior to such initial individual evaluation the school district must notify the parents or guardian of the child of its intent to evaluate the child. If the parents refuse to consent to the initial individual evaluation the school district/IU must request a hearing.

A pre-evaluation hearing will then be held in accordance with the procedures and guidelines for "due process" hearings. At the hearing the school district/IU shall present evidence as to why it feels the child may be exceptional and, therefore, should be evaluated. The school district is also to show how it proposes to evaluate the child. The parents may contest this evidence and show that the child is not exceptional and/or does not require evaluation.

The questions which a hearing officer may have to answer in order to resolve the issue of whether or not the proposed testing and evaluation represents a reasonable educational procedure in view of the child's school conduct or academic performance are:

A. Has the district/IU presented evidence or testimony with regard to the student's classroom behavior or academic achievement which would show that the child may need special education and related services if the proposed personalized testing shows that the child is exceptional? If the answer to this question is "yes", then proceed to question B. If the answer is "no", then find for the parent.

B. Are the proposed tests needed to measure, or contribute to the measurement of the child's exceptionality? The hearing officer should make a ruling on each personalized test proposed, which is being given for the first time. If the answer to question B is "yes", then the officer should find for the district.

The hearing officer should pose these questions during the hearing if no one else does. In his report, the hearing officer should discuss why he came to the conclusions he did and should support the conclusion with citations to the transcript and exhibits.

Once again the district's burden is not to show that the child in question is exceptional, but that the child's school performance is such that it indicates that the child may be exceptional and in need of special education and should be evaluated by the tests the district has proposed.

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*Note that pre-evaluation hearings are inapplicable to group screenings; to the re-evaluation of an exceptional child who is already receiving special education; or to a review of the child's existing psychoeducational records, reports and diagnostic evaluations.

A hearing officer may during the hearing suggest additional or alternate tests and ask whether the district and parents think that the additional or alternate tests are needed. Or, he/she may keep silent on this point. However, the hearing officer may not include such suggestions in the recommendations to the Secretary if these suggestions were not brought up at the hearing itself and agreed to by the parties.

Unlike at a program placement hearing, the hearing officer's responsibilities at a pre-evaluation hearing are limited to ruling upon the testing procedures the district has proposed and do not extend to making recommendations which might cure any defects or omissions in the district's proposed procedures. A hearing officer may note such defects or omissions in the report and may base the ultimate finding for or against the district upon such defects or omissions. Because of the narrow scope of a pre-evaluation hearing, the officer lacks authority in such a hearing to order the district to do additional testing.

The decision of the hearing officer at this hearing may be appealed in accordance with the appeal procedures set forth in Section XIV.

IV. HEARINGS ABOUT PAST EVALUATIONS

A hearing regarding a past evaluation can arise in two situations. The first situation is when parents wish to challenge the conclusion a school district has reached following its evaluation of an exceptional or thought to be exceptional child. The second situation arises when a parent is dissatisfied with the completeness of a public school evaluation and asks for the district to pay for more outside testing and the district refuses this request. In the first situation it is the parent who requests the hearing. In the second, it is the district. (A district cannot refuse a parent's request for outside testing unless the district asks for a hearing to contest the request.)

If an evaluation hearing is requested, it will be held in accordance with the procedures and guidelines for "due process" hearings.

A. Parent requested hearing regarding conclusions reached in district or intermediate unit evaluation

In this type of hearing, the parent is arguing against the conclusions the district reached about the existence, nature or extent of the child's exceptionality. Because evaluations take many forms the issues which can be raised at such a hearing are many. (Evaluations can include, in any combination, district/IU review of current testing, past testing, and anecdotal reports from any source.) Generally, though, the principal issues which might be raised are: (i) whether the tests used are themselves adequate, (ii) whether the test results are sufficiently current, (iii) whether enough or any tests were used, (iv) whether the anecdotal reports and direct observations were accurate, (v) whether all the data collected for the evaluation was properly interpreted.

B. District requested hearing regarding parent request for outside evaluation

In this type of hearing the school district/IU is arguing that its evaluation of the child, in whatever form, is a complete and adequate assessment of the child's exceptionality and levels of achievement for purposes of developing the child's IEP. This argument is made in contrast to the parents' contentions that the district/IU evaluation is incomplete and that the parents, therefore, have the right to be afforded an outside evaluation of their child free of charge. The issues which might be raised at this type of hearing are similar to those noted above concerning the parent requested hearing.

The hearing officer at either of these hearings must determine whether or not the school district's/IU's evaluation of the child is correct and complete in accordance with 22 Pa. Code §341.13(c) and (d).

The hearing officer, if necessary, may recommend that additional evaluations of the child be performed in order that he/she may make a finding on this issue. If additional testing is ordered, the hearing shall be reconvened thereafter for consideration of the new test results. The hearing officer's decision must be supported by a preponderance of the evidence.

Note, however, that if the hearing concerns the parents' request for an independent evaluation at public expense, then the parents have the right to such an evaluation if the school district/IU evaluations are found not to be complete and/or appropriate. In such a hearing the hearing officer should not recommend additional evaluations by the district which would foreclose the parents' right to an independent evaluation. The hearing officer, if he or she finds the district evaluation to be incomplete shall then order that the parents be provided with an outside evaluation at public expense.

The decision of the hearing officer may be appealed in accordance with the appeal procedures set forth in Section XIV. Any change in assignment of the student is stayed pending the appeal, unless otherwise agreed to by the parent and the school district/IU.

V. INDIVIDUALIZED EDUCATION PROGRAM (IEP) HEARING

An Individualized Education Program shall be developed for each person assigned to special education programs or services. The Special Education Standards (22 Pa. Code §341.15) specify what is to be included in the IEP. The IEP is to be developed at a conference held pursuant to 22 Pa. Code §341.16.

The IEP is an education program developed jointly by the parents and school personnel. It is not a binding contract. The IEP may be revised periodically in accordance with Special Education Standards without the requirement of notice and right to a hearing.

In the case of an initial IEP or where a revised IEP results in a change in educational status, special education program, or related services, the child's parents are entitled to notice and, if they disagree with the IEP or certain components of the IEP, to a "due process" hearing called an IEP hearing.

The IEP hearing is to be held in accordance with the procedures and guidelines for "due process" hearings. In the opening statements the parties should identify those components of the IEP which are at issue. The school district should then present its proposed IEP and evidence in support of those components challenged by the parents. The child's parents may present evidence concerning their points of disagreement with the district's IEP.

Based upon a preponderance of the evidence on the record, the hearing officer must issue a report defining the assignment, program, and services in such specificity as is deemed necessary. The parties must then develop an IEP at a meeting held within 10 days of the receipt of the decision which conforms with the decision of the hearing officer (unless intervening evaluations are necessary). In cases where evaluations are ordered or where the hearing officer does not specifically recommend revisions of the IEP he/she shall either issue an interim order and retain jurisdiction, in case of any disagreement among the parties, or upon agreement of the parties to evaluate and revise the IEP, postpone the hearing pending such activity.

Note that the decision of the hearing officer may be appealed in accordance with the appeal procedures set forth in Section XIV and that development of the IEP is stayed pending the appeal, unless otherwise agreed to by the parent and school district/intermediate unit.

VI. PROGRAM/PLACEMENT HEARING

A. Legal Responsibility of School District/IU.

Pursuant to the provisions of the Public School Code of 1949 each school district in the Commonwealth has the duty to identify all exceptional, handicapped school-age persons residing in the school district. 24 P.S. §13-1371(2); Savka v. Department of Education, 44 Pa.Commw.Ct. 62, 65, 403 A.2d 142, 144 (1979); Central York School District v. Department of Education, 41 Pa.Commw.Ct. 383, 385-386, 399 A.2d 167, 168 (1979). The school districts, in conjunction with their intermediate units must also prepare special education plans and provide and maintain classes in accordance with those plans for the proper education and training of exceptional children. 24 P.S. §13-1372(3) & (4); Central York, supra. In certain circumstances the school districts may satisfy the aforestated responsibility by placing a child with a particular handicapping condition in an approved private school or a state institution. 24 P.S. §§13-1372(3), 13-1376, 13-1377, 22 Pa. Code §§13.11(b) & (d), 13.14, 171.11 et seq. The primary responsibility for providing an appropriate program of special education and related services to an exceptional child, however, rests with the child's school district of residence. West Chester Area School District v. Secretary of Education, 43 Pa.Commw.Ct. 14, 17, 401 A.2d 610, 612 (1979).

A school district must provide a resident exceptional student with an appropriate program of special education in a class which will address the student's individual educational needs as they are reflected by the student's exceptionality and resultant educational deficits. 22 Pa. Code §§13.1, 13.11(a), 13.16, 341.1. The district's responsibility is not to devise a program which makes the best use of the student's abilities but to develop educational programs appropriate for the needs of each exceptional student. Shanberg v. Commonwealth, No. 163 C.D. 1980 Slip Op. at 2 (Pa.Commw.Ct., March 9, 1981). Applicable regulations and standards recognize, define, and distinguish between several exceptionalities. 22 Pa. Code §§13.1, 341.1.

Not only must the district place a child in an instructional program compatible with the student's exceptionality, but the district must do so in compliance with both the "priority order of placement" and the requirement of mainstreaming set forth in the regulations and standards. 22 Pa. Code §§13.9, 13.11(d), 341.21, 341.55(b). The priority order of placement, stated in 22 Pa. Code §13.11(d), represents a list of possible educational placements compiled in descending order of desirability. West Chester, supra 43 Pa.Commw.Ct. at 18, 401 A.2d at 612. Accordingly, it has consistently been held that an approved private school placement will be approved only if an appropriate public school program for the child does not exist. Id.; Savka, supra; Krawitz v. Department of Education, 48 Pa.Commw.Ct. 155, 160, 408 A.2d 1202, 1205 (1979). It has also been recognized that approved private schools are intended for the most severely handicapped of the state's children. Summit School v. Department of Education, 43 Pa.Commw.Ct. 623, 629, 402 A.2d 1142, 1145 (1979). Mainstreaming, however, is the integration of exceptional students into academic and/or nonacademic "regular" classes in which nonexceptional youngsters are also instructed. 22 Pa. Code §13.1. It is one of the goals of special education and is considered to be the preferred educational strategy. Frederick L. v. Thomas, 419 F.Supp. 960, 973 (E.D. Pa. 1976).

B. Scope of Hearing

It is within the above framework that the exceptional child's school district must develop its program/placement offer for the child and within which the hearing officer must review the offer or proposal. At the conclusion of the IEP conference the school district/IU will notify the parents of the program and placement which is proposed as the free appropriate special education for the child. If the child's parents disagree with the district's proposal, they may request a program/placement hearing to contest the proposal or aspects thereof. However, in cases of initial placement in special education the district must request a hearing prior to placement of the child in special education.

The role of the hearing officer at a program placement hearing is to determine whether the school district/IU has met its legal responsibility to provide an appropriate and adequate special education program and placement in accordance with the above legal framework.

The key issues which may be involved in program/placement hearings are:

1. Is the child exceptional? In other words, does the child exhibit a physical or mental handicap or mental giftedness, as defined, at 22 Pa. Code §341.1 which could influence his/her educational performance?

2. If the child is exceptional, is he/she in need of a special education program and services or a change therein as a result of his/her exceptionality?

3. Is the school district's proposed program/placement adequate and appropriate for the exceptional child?

a. is the program designated and State approved for the child's exceptionality?

b. if appropriate, is the program also adequate for the degree of handicap and to address the particular educational needs of the child?

c. does the proposed program require modifications?

d. is there a need for vocational education?

e. is appropriate mainstreaming provided for and is the placement in accordance with the priority order of placement (22 Pa. Code §13.11(d)) and in the least restrictive environment?

f. are related special education services provided for as appropriate to the instructional needs and goals of the child?

g. is the transportation provided or proposed detrimental to the educational program?

VII. HEARINGS FOR CHILDREN BELOW SCHOOL AGE

The Bureau of Special Education has developed procedures which provide due process for exceptional children below school age in order to comply with the mandates of P.L. 94-142. The term children below school age means children who are at least three years of age, but who are less than the earliest age at which the school district of residence provides an educational program for all of its students. The hearings provided for these children may also be called "pre-school" hearings.

An exceptional child below school age is entitled to due process if:

A. The IU is proposing an initial placement, which is opposed by the parents, and yet, the IU does not choose to retract its offer; or

B. the IU is proposing a change in a child's pre-school placement over the objections of the child's parents; or

C. the IU is refusing to change a child's placement at the parents' request, and yet, the IU wants to continue to serve the child; or

D. the IU is proposing an initial evaluation for a child who is already in an IU program, the parents have refused to consent to this evaluation, and yet, the IU wishes to continue to serve the child.

In all the above situations, the child's parents may request a hearing in order to challenge the proposal or position of the IU concerning special education for the child. However, because there is no mandate in state law that free public education be provided, prior to a child's attaining school age in the district of residence, the IU is not bound to provide the child with a program of public education. Therefore, decisions rendered at these hearings are advisory in nature and do not bind either party. For example, if the parents of a child in an IU pre-school program have a hearing because they want the child to attend an approved private school, and the hearing officer recommends the change in placement requested by the parents, the IU is not bound to implement that decision unless it so desires.

Note that because of the advisory nature of these hearings there will be no right to appeal to the Secretary or to the courts.

VIII. ADMINISTRATIVE RES JUDICATA

Res judicata is a legal principle which denies the same parties the right to relitigate an issue or issues on which a final decision has been rendered in previous litigation. In other words, you only have one opportunity to argue your case in any one court, unless an appeal is filed.

This principle is, to a certain extent, also applicable to administrative proceedings, such as the "due process" hearings. Therefore, we will apply this principle to the "due process" hearings discussed herein.

Note that administrative res judicata is only applicable to those cases where there exists:

1. identity of claims and issues;
2. identity of parties; and
3. a prior final decision on the merits of the case.

Therefore, in order to apply this principle to a "due process" hearing, the above elements must be present.

The first requirement can only be satisfied if, at the second hearing:

1. the district's program/placement proposal is the same as at the previous hearing;

2. the parent's desires for their child's educational program and placement are the same as at the original hearing (NOTE, this factor is irrelevant where the district's program was held appropriate at the prior hearing because the district is satisfying its legal responsibility to the child by providing an appropriate program of special education.)

3. no new material evidence is introduced which would raise new issues or which might possibly result in a reversal or modification of the earlier decision;

4. there has been no change in law, regulation or policy in the interim between the hearings which might require reversal or modification of the prior decision; and

5. there is no manifest error on the record of the hearing.

The second requirement, of identity of parties will be satisfied unless:

1. a different school district and/or intermediate unit has jurisdiction over the child.

2. the child has a different guardian or surrogate parent than at the first hearing, or

3. the child is represented by a guardian or surrogate parent as opposed to the parents who were present at the first hearing.

Therefore, unless one of the above situations occurs, there will be identity of parties at a subsequent hearing.

The third requirement for administrative res judicata is that the prior decision was a final decision on the merits of the case. In our "due process" hearings, in accordance with 1 Pa. Code §35.1 _et seq_. the recommendations of the hearing officer become a final order if not appealed to the Secretary within the prescribed appeal period and, even if appealed, the subsequent opinion and order of the Secretary becomes a final order if not appealed to either Commonwealth or Federal District Court within the prescribed appeal period. Therefore, unless an appeal has been filed from the prior hearing, the hearing officer's recommendations or the Secretary's order shall have become final orders or decisions and res judicata can be applied.

Finally it would also be advisable to only apply _res judicata_ to those cases where the parties were represented by legal counsel.

If administrative _res judicata_ might be applicable, the procedures to be followed are:

1. if at all possible, the hearing officer who sat for the first hearing should be assigned to the second;

2. the hearing should be conducted and a decision rendered as provided in this handbook, except that, the hearing officer should also make findings concerning the identity of the parties and the issues;

3. the hearing officer's report will then be reviewed by the Secretary of Education to determine whether or not administrative _res judicata_ applies;

4. the Secretary, based upon a review of the records of the hearings, shall issue an order on the question of _res judicata_; and

5. the Secretary's order may be appealed to Commonwealth Court, or Federal District Court if the child is handicapped.

IX. THE DECISION AND RECOMMENDATION

The hearing officer's recommendation(s) and decision must be based on the documentary evidence and testimony on the hearing record. (Evidence and testimony are discussed in detail in Section X.) The hearing officer's recommendations should be specific and practical, yet, substantiated by the evidence. These recommendations should, however, not infringe upon the school district's right to determine how best to implement the particular program component or special education service which is being recommended by the hearing officer. For example, if the hearing officer determines that the child requires greater individual instruction than was proposed he should recommend same but not how the district should provide it.

The primary duty of the hearing officer is to determine whether the school district's proposed placement, program and/or related service provides a program of education and training appropriate for the child's learning capabilities and in accordance with law. If the program/service is not adequate, or if the assignment to a given program is not justified, the hearing officer has the authority to determine, if possible, the proper type of educational assignment. In other words, the hearing officer can make alternative recommendations for the child's program.

If a preponderance of the evidence at the hearing shows the school district's proposal to be both appropriate and adequate, then the hearing officer must find for the district because the district has satisfied its legal obligation to the exceptional child. This is so even if the parents are also proposing a program and placement which is appropriate and adequate for the child. The hearing officer must explain why he/she feels the preponderance of the evidence requirements have been met. If a preponderance of the evidence is not present, the hearing officer's recommendations will be rejected on appeal.

A. Options when Proposed Placement/Program Inappropriate

If the hearing officer finds the proposed placement to be inadequate and/or inappropriate for the child, the hearing officer has the authority to recommend the proper type of educational assignment for the child--but only if the recommendations can be supported by a preponderance of the evidence presented at the hearing. If there is insufficient evidence on the record to indicate the type of program the child should receive, the hearing officer must direct the school district to provide the necessary information and/or to propose a proper educational assignment for the child. The hearing officer should then adjourn the hearing and reconvene after the school district has secured the information and/or developed a new proposal for the child.

If the hearing officer rejects the school district's proposed educational assignment, he/she must explain why that assignment was inadequate, improper or not supported by a preponderance of the evidence. That explanation must be supported by the record in the case. It would be an error for the hearing officer to rule that the assignment is inadequate if the evidence present on the whole record shows the opposite.

B. Least Restrictive Environment

Though the hearing will generally involve the "type" of program to be provided to the child the hearing officer may also be called upon to address specific placement issues concerning mainstreaming, priority order of placement and least restrictive environment. If these issues are raised the hearing officer should obtain the necessary evidence to determine whether or not the district's proposed placement is in accordance with applicable law. If these issues are not raised the district must, in accordance with the law, secure a placement for the child which satisfies the hearing officer's recommendations for appropriate special education programming for the child.

In cases where least restrictive environment is at issue, the hearing officer must determine, in addition to whether the proposed program is appropriate, whether the proposed placement is a reasonable accommodation for the handicapped child. In determining whether the district has acted reasonably in proposing to accommodate the handicapped child in a particular school, which is not the school the child would attend if not handicapped, the hearing officer may consider the elements of finances, geography and incidence of handicapping condition requiring that specific type of placement. For example, in a rural area, an IU class which is centrally located to serve several districts might be considered a reasonable accommodation and the least restrictive environment for a limited number of handicapped children of a certain handicap from the surrounding districts who require a certain special education placement.

C. Trial Placement

The hearing officer may decide on a trial placement if it is supported by the evidence on the record. He/she may rule that the hearing be reconvened at the end of the trial placement if the parties are not satisfied. The hearing officer may also rule that an evaluation be done at the end of the trial placement period and that another due process hearing be held.

In all cases of trial placement, the hearing officer's recommendations must be specific.

D. Delay of Change in Assignment

If the decision entails a change in placement from the present assignment, the hearing officer has the authority to delay the change until an appropriate time. Savka v. Pennsylvania Department of Education, 403 A.2d 142, 145 (1979). In some instances, he/she may decide it would be detrimental to the child's emotional well-being to change programs in the middle of the school year. The hearing officer may then recommend that the child remain in his present placement for the rest of the present school year and that the change in placement occur at the beginning of the following school year. It is within the hearing officer's authority to make this decision, but the decision must be supported by the evidence. It is not to be used as a delaying tactic by the school district/intermediate unit or the parent, but must be the hearing officer's recommendation in the best interest of the child.

However, the above is inapplicable where the parents themselves have initiated a private school placement without departmental approval. In such cases the parents are responsible for the private school placement until and unless the department subsequently approves the placement.

E. Compulsory Attendance

Parents have an obligation to send their exceptional children to school. If the parent chooses not to accept a public school placement, he/she still has an obligation to see that the child receives an education in compliance with compulsory attendance laws. 24 P.S. §13-1326, 13-1327, 13-1330. This is true even when, for example, the issue at a special education hearing is whether a public school placement is appropriate for the child. In other words, the compulsory attendance laws are applicable regardless of the pendancy of any due process proceedings.

F. Placement in Other Than Public School Program

Placement of an exceptional child may be recommended for other than a public school program (school district/IU program) as the result of a hearing. By such placements is meant placements in approved private schools or state institutions, hereinafter referred to as private schools. (N.B. If there is any question as to whether a private school is approved by the department for the placement of an exceptional child contact the Assistant for Right to Education.)

In those cases where the hearing officer is upholding a district proposal for placement in a specific private school the hearing officer's recommendations may be for placement in that specific private school. Otherwise, the hearing officer should not recommend that a child be placed in a specific private school. The hearing officer may, however, refer to a certain private school, explaining why that school's program would meet the child's needs in light of the evidence presented at the hearing. Naming private schools with adequate programs could forestall the need for additional hearings and provide the school district with valuable guidance. The record of the hearing _must_ contain some evidence that the programs of such private schools might be appropriate, except that, the hearing officer may use his/her own knowledge in discussing and considering alternative private schools as placement possibilities. However, particular private schools referred to by the hearing officer, unless upholding a specific district proposal are only _suggestions_ and cannot constitute binding recommendations for a particular placement.

X. EVIDENCE AND TESTIMONY

Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonable probative value may be received. Reasonable examination and cross-examination shall be permitted. Act of April 28, 1978, P.L. 202, No. 53, §5, 2 Pa. C.S.A. §505.

A. Burden of Proof

The initial burden of proof at a "due process" hearing rests with the school district/IU. The school district/IU may introduce into evidence the official report recommending a change in educational assignment and will thereby discharge its burden of going forward with the evidence. (22 Pa. Code §13.32(15)) However, this does not satisfy the district's burden of proof, if said report is challenged. The district should present all relevant and material evidence in support of the position which the district is taking at the hearing.

The parent must then present evidence to contest the district's position. The parent has the burden of presenting evidence of why the position or proposal of the school district/IU is inappropriate for the child; and in order to prevail at the hearing must satisfy that burden. Fitz v. I.U. #29, 403 A.2d 138, 140 (1979). The parent may also present evidence of what the parent feels is the appropriate position or proposal concerning the child.

B. Preponderance of the Evidence

The decision or recommendations of a hearing officer must be supported by a preponderance of the evidence on the record of the hearing taken as a whole. A preponderance of the evidence exists when the quantity of evidence supporting one position is greater than the evidence supporting the opposing position. The evidence relied on in making a decision may be contested, however, if it outweighs the evidence to the contrary it may serve as the basis for the decision.

C. Background and Qualifications of Witnesses

A party must be given the opportunity, if desired, to describe a witness's background. The hearing officer judges the credibility of every witness based on the witness's background. The hearing officer may question a witness's credentials. Any information about the witness's credentials, qualifications, and training is important. This information may be presented beforehand in writing if both parties agree and receive copies. The parties may then stipulate on the record as to the credentials and qualifications of the witnesses.

D. Documentary Evidence

At the hearing the school district/IU should introduce the official documents which support or substantiate the position being taken or recommendation being made by the district. Valid reasons, on the face of the documents, need not be supported by additional evidence if the parents or the hearing officer fail to challenge them.

A problem has arisen at "due process" hearings when the parent presents a psychological report or test result in evidence but the person who prepared the report is not present. It is usually too difficult and expensive for the parent to have this person present at the hearing; nevertheless, a possible fraudulent report cannot be accepted without question. The parties should be asked to stipulate beforehand, and on the record, that the report was prepared by the person who signed it, stating the individual's place of employment and other background information concerning the individual. However, a parent offered document, the validity of which is not stipulated to, should still be admitted into evidence and weighed accordingly.

If the report submitted by the parent is not a psychological report or a test result, but simply a statement of the child's behavior by a nonprofessional, it may be accepted as evidence; however, it is up to the hearing officer to determine how much weight to give it.

However, whenever an evaluation or report is submitted, it is best that the person who prepared the document be available to identify it and interpret the results or conclusions. A document which is accompanied by corroborative testimony may be given more weight than a document without such testimony.

E. Evidence Presented by Parent

Evidence given at the hearing by the parent himself/herself must be given the same consideration as testimony by professional witnesses. It is up to the hearing officer to weigh the credibility of this evidence, knowing that some children do not perform as well under testing situations as they do in the home.

F. Additional Evaluations

The hearing officer shall request additional evaluations if he/she feels that those presented do not supply sufficient information, as to the appropriate program or some component thereof, on which to base a decision. The hearing should be postponed pending the completion of the hearing officer ordered evaluation(s) and consideration thereof by the parties.

The hearing should then be reconvened for presentation of additional evidence to the hearing officer concerning the results of the evaluation(s).

G. Medical Evidence

The testimony of a medical doctor is only appropriate for the child's medical condition; it is not binding on whether the child can profit from a particular educational program. The physician's opinion should be weighed with the other evidence. In other words, a medical doctor can, and in fact must, testify as to whether a child is brain injured or physically handicapped, however, he is not qualified to indicate the special education needs of the child resulting from that brain injury, unless his/her credentials so warrant.

H. Observing the Child

If the hearing officer observes the child, he/she should make a statement to that effect on the record and give both sides a chance to respond. This is especially true if any part of the decision is based on the hearing officer's observation of the child. If the child is present at the hearing, the hearing officer has the authority to determine whether or not the child should be allowed to stay.

I. Compelling Attendance

If the parent desires the attendance of certain school district/IU personnel at the hearing, the parent should request said attendance of the appropriate school district/IU officials. The parent should be notified if any such persons are unwilling or unable to attend. The parent may then notify the hearing officer as to the names of such persons and the rationale for requesting their attendance. The hearing officer will then determine if the presence of such persons is necessary. The hearing date may be altered in order to allow witness to attend, provided that the parents agree to a continuance. However, if witnesses refuse to attend they may be subpoenaed.

The hearing officer may, on his own motion, compel the attendance of any person who may have evidence upon which the action proposed or recommended by the school district/IU was based and who refuses to attend. Compelling attendance of witnesses should be done before the hearing and is considered a formal part of the proceedings.

J. Evidence Requested by Hearing Officer

The hearing officer may request additional evidence to be provided after the hearing if he/she feels such would be relevant and helpful in making a decision. However, if the hearing officer wishes to base his recommendations on such evidence, he/she must request the evidence on the hearing record and allow the parties the opportunity to raise objections to this evidence. The parties may stipulate to the content and use of the evidence; agree, on the record, to respond to the evidence in writing; or request that the hearing be reconvened to consider the evidence. If such request is made it must be granted.

K. Pre-Hearing Disclosure of Evidence

Prior to the hearing the parties must make available to each other those documents to be introduced into evidence at the hearing. No less than 5 days prior to the hearing the parties must list the documents and witnesses they expect to produce at the hearing and share that information with the other party. Each of the parties may include the hearing officer in the exchange of the lists of evidence. However, if any documents are actually exchanged prior to the hearing, the parties are not to include the hearing officer in this exchange. An example of this is that the school district is not to send the hearing officer a complete packet of all of the evidence the school district will present at the hearing. The school district may, however, send the hearing officer a copy of the list of the evidence when it is sent to the parent.

If the hearing officer receives any material prior to the hearing, from any of the parties, other than a list of evidence, the hearing officer must contact that party immediately to 1) inform them that he/she will disregard the information they have sent and 2) remind them that they must exchange the list of evidence 5 days prior to the hearing.

If one party has not complied with the above then the other party may plead surprise and may either request time at the hearing to review documentary evidence or, if the extent of unpreparedness is extreme, may request a postponement of the hearing. The hearing officer should consider the amount of evidence to be presented, the complaining party's prior access thereto and knowledge thereof in determining whether or not to postpone the hearing.

XI. SUGGESTED FORMAT FOR HEARING OFFICER DECISION

The cover page should be used for each decision. The form for the cover page is included herein as Appendix "C".

The following format should be used in writing reports of "due process" hearings:

1. List the persons attending the hearing (not necessary if listed in transcript) and their positions.

2. List the exhibits introduced at the hearing and the page on which they are introduced (not necessary if listed in transcript).

3. Short narrative background of hearing: Should include what happened between parents and district prior to hearing. What led up to the hearing: conference, due process notices, who requested the hearing, child's past educational history and testing.

4. Brief statement of position of each side.

5. General issues to be resolved (depends on the type of hearing being held); e.g., for a program/placement hearing the issues might include:

   A. Identification of child's handicap
   B. Need for special education
   C. Change in placement
   D. IEP

6. Evidence presented by parties. Provide a list and/or concise summary of the evidence presented with citation to the transcript; e.g. N.T. 101 or S.D. Ex. #10. (It is not necessary to restate all of the evidence which was presented.) Exhibits and testimony may be presented separately or together.

7. Uncontested facts and stipulations with citation to the transcript. Include herein any relevant facts which were not challenged on the record and any facts agreed to by the parties and supported by substantial evidence.

8. Additional evidence requested by hearing officer. (Omit if no evidence requested.)

9. Findings of Fact - Conclusions on relevant factual issues with citation to the transcript where evidence supports the conclusion made.

   e.g., Conclusion(s) of fact.

1. John's academic functioning is approximately 2.5-3 years below grade level (N.T. 25-27, 48-53; S.D. Exs. #4, 5, 11)

Discussion: The testimony of John's present teacher showed that John was at a 2nd grade level in his academic subjects. John should be in the 4th grade. The school psychologist's testing confirmed John's lag in achievement.

10. Conclusion(s) of law - The hearing officer should apply the applicable statutes and regulations to the facts of the case in reaching his/her conclusions.

e.g., Conclusion(s) of law.

1. John is a learning disabled child in accordance with the State Standards. (22 Pa. Code §341.1(iii) and Facts #1, 2, 3, 7 and 9)

Discussion: Though John has exhibited average intelligence on the WISC-R administered by the school psychologist, he is experiencing visual motor problems which have severely depressed his achievement level in reading and related areas.

11. Recommended Order for Adoption by the Secretary of Education (1 Pa. Code §§35.201 - 35.207)

A. Recommendation

1. List conclusions of fact and of law from Section 9 which support this recommendation.

Reasoning:

12. Nonbinding suggestions for the school district or IU.

A. Suggestion

Reasoning:

13. Signature and date.

XII. MAILING THE DECISION

After the decision is written, one copy is to be sent certified mail, return receipt requested, to each of the following:

a. the school district,
b. the intermediate unit,
c. the parent, and
d. the representative(s) of the parties

If the parents have not attended the hearing, in addition to the above, a copy of the decision should be sent to the parents by regular mail.

Three copies of the decision, the transcript and the exhibits are to be immediately sent to:

Right to Education Adviser
Bureau of Special Education
Box 911, 333 Market Street
Harrisburg, Pennsylvania 17108

The "return receipts" from the copies that are mailed to the parent and school district/IU are to be forwarded to the Right to Education Adviser, Bureau of Special Education.

XIII. IMPLEMENTING THE DECISION

The hearing officer is not responsible for insuring the implementation of his/her decision. It is the responsibility of the Bureau of Special Education, Division of Regional Review, to enforce the decision within certain timelines. The procedure for investigating implementation is as follows:

- The Right to Education Adviser receives the decisions of the hearing officer and then transmits a copy to the regionally assigned special education adviser.
- The regional adviser will make an on-site visit to the school district/IU within 30 to 45 days following receipt of the decision unless exceptions/objections to the decision are filed.
- If exceptions/objections are filed by either party, the regional adviser will await receipt of the Secretary's decision or subsequent order of court before initiating follow-up procedures. The on-site visit will occur within 30 to 45 days following a final decision.
- The parent(s) will be notified by letter as to the time and date of the on-site visit to the school district/IU. The regional adviser will provide the parent(s) with the opportunity to discuss implementation of the decision.
- The regional adviser will report on the status of the implementation of the decision. This report will be shared with the parent and the school district/IU.
- The regional adviser will report on the status of the implementation of the decision. The conclusion will be that either:
  - the decision is fully implemented, or
  - the decision is partially implemented or not implemented and follow-up activity is to be accomplished within specified timelines.
- When the implementation of the decision raises additional issues not covered by the decision, and there is dispute between the district/IU and parents, the adviser will describe the unresolved dispute and indicate the necessity for the district/IU to issue a revised NORA. A final decision concerning implementation shall not be made until the issuance of a NORA, verified by the adviser, and agreement of the parties or a final hearing decision. The granting of a hearing or reconvening the hearing will be determined by the Right to Education Adviser.

- When the particular class placement is not an issue in a hearing, but as part of the implementation of the decision a change in placement occurs which alters the restriveness of the child's placement, then a NORA must be issued. The final decision regarding full implementation shall not be made until the issuance of a NORA, verified by the adviser, and agreement of the parties or a final hearing decision.

- If the decision is not implemented or parts of it are not implemented and the educational agency states it will not move to complete the actions necessary for the implementation, the adviser will notify:

  a. Division Chief.

  b. Right to Education Adviser

XIV. APPEAL PROCEDURES

The following page contains the procedures to be followed for the appeal of a hearing officer decision.

A copy of the appeal procedures is to be attached to each copy of the decision sent to the parent, school district, intermediate unit and to any of the parties' representatives.

Procedure to Object to Report of Hearing Officer

A hearing officer's report constitutes Findings of Fact made by the hearing officer and a list of recommended orders (recommendations) which the hearing officer believes the Secretary of Education should adopt.

The report of the hearing officer may be appealed to the Secretary of Education by the parent, guardian, surrogate parent, school district or intermediate unit. 22 Pa. Code §13.32(24). The General Rules of Administrative Practice and Procedure of 1 Pa. Code §31.1 et seq. are applicable to proceedings before the Department of Education. 22 Pa. Code §1.6. Therefore, in order to appeal from a hearing officer's decision, one of the above-named parties must file exceptions (objections) to the hearing officer's report with the Special Education Adviser for Right to Education Adviser. 1 Pa. Code §35.211.

All exceptions to the report and recommendations must be as specific and as simply stated as possible. The excepting party may also file a legal brief in support of the exceptions in conformance with 1 Pa. Code §35.212. Filing of a brief is not necessary for the submission of exceptions to the Education Department.

1. Exception(s) to the hearing officer's report (and any accompanying brief which a party may wish to file with the Education Department) should be sent to:

   Right to Education Adviser
   Bureau of Special Education
   Pennsylvania Department of Education
   Box 911, 333 Market Street
   Harrisburg, Pennsylvania 17108

2. Exceptions and briefs (if any) must be received by the Right to Education Adviser no later than 15 days after the excepting party's receipt of the hearing officer's report. It is the date the exceptions are received rather than the date the exceptions are sent that determines if the 15 day time limit has been met. 1 Pa. Code §31.11.

3. A copy of the exceptions and brief (if any) must also be sent to the opposing party and to the lawyer or advocate who represented the opposing party at the hearing.

4. The opposing party can file an answer to the exceptions. The answer must be received by the Special Education Adviser for Right to Education within 10 days of the opposing party's receipt of the exceptions. 1 Pa. Code §31.11. A copy of the answer and any accompanying brief must be sent to the excepting party as well.

5. If no exceptions are submitted by either party, but the hearing officer's decision is not supported by law or evidence, the Secretary may issue an _ex parte_ order modifying the hearing officer's decision.

6. Extensions of time for filing of exceptions, answers and supporting briefs may be granted for good cause. 1 Pa. Code §31.15. A request for an extension of time must be submitted prior to the expiration of the time for appeal or answer. The request may be made by telephone to the Special Education Adviser at (717) 787-4714. However, the request must be confirmed in writing with a copy sent to the opposing party.

7. The Secretary shall review the complete record of the hearing, the hearing officer's report and recommendations, all exceptions, answers, and briefs and render a final order.

8. A final order of the Secretary of Education either adopting, modifying, or rejecting the hearing officer's report shall be rendered within 30 days after the Education Department's receipt of the exceptions.

9. Any party may apply for the Secretary's reconsideration of a final order of the Secretary within 15 days of the issuance of the final order. 1 Pa. Code §35.241. Such application shall be made by petition filed with the Special Education Adviser for Right to Education Adviser, stating specifically the grounds relied upon. The proceedings on an application for reconsideration shall be in accordance with 22 Pa. Code §35.241.

10. Any party may appeal any final order of the Education Secretary to court within 30 days of the issuance of the final order. When the hearing is about a handicapped, gifted, or talented child, an appeal of the Secretary's final order can be made to Commonwealth Court in accordance with applicable provisions of the Judicial Code, Act of July 9, 1976 (P.L. 586, No. 142), amended by Act of April 28, 1978 (P.L. 202, No. 53), 42 Pa. C.S.A. §§763(a), 5105(a)(2), 5571. In the alternative, where the hearing has been about a handicapped child, any final order of the Secretary may be appealed to the United States District Court pursuant to the Education of the Handicapped Act, 20 U.S.C. §1401 _et seq_. (1975). Appeal to the United States District Court is not available when the hearing is about a gifted or talented exceptional child.

    If a party wishes to appeal to the courts, they should first contact a private attorney or the legal services law office listed on the due process notice which the party received from the school district.

11. Failure to file exceptions to the report and recommendations of the hearing officer within the time allowed shall constitute a waiver

of all objections to the report and recommendations. 1 Pa. Code §35.213.

12. If no exceptions are filed to a hearing officer's report and if the report is not modified or rejected by the Secretary, it will become final and deemed adopted by the Secretary of Education at the expiration of the appeal time. 1 Pa. Code §35.226(3).

XV. SHOW CAUSE HEARINGS

A. Application for Private School Placement of an Exceptional Child

If a child's exceptionality is of such severity that he/she cannot be served in a public school program, then, pursuant to Chapter 171 of 22 Pa. Code, application will be made to the Department for the child's placement at an approved private school (DEBE 448). The Department may disapprove the application if it does not satisfy the requirements of the *Standards for Approved Private Schools*. (22 Pa. Code §171.11 *et seq*.) In such case, an Order to Show Cause shall be issued by the Department, giving the reasons for the disapproval of the application and notice of the parents' right to a hearing to contest the Department's disapproval.

The hearing in this matter is known as a Show Cause Hearing. The purpose of this hearing is

> . . . to determine the appropriateness of the proposed [private school] assignment and its conformity with subsection (c) of this section [concerning the priority order of placement], 22 Pa. Code §171.16(g)(2).

In other words, the issues to be addressed at a show cause hearing are whether:

1. the application and attached documents support the exceptionality claimed,
2. the proposed private school is approved by the Department for the child's exceptionality,
3. the school district has followed the priority order of placement required by 22 Pa. Code §§13.11(d) and 171.16(c), and/or
4. the district has followed legally mandated due process procedures in submitting the application. (22 Pa. Code §§13.32(9) through 13.23(23)).

The authority of the hearing officer in this matter is greatly limited by the above. The show cause hearing is in no way a program/placement hearing, as described in detail in Section VI *supra*. Therefore, if program/placement issues exist, a program/placement hearing should be held either before or after the show cause hearing.

This show cause hearing is to be conducted pursuant to 22 Pa. Code §13.32 (9) thru (23). This simply means that the general procedures applicable to "due process" hearings also apply to the show cause hearing; e.g., time and place of hearing, evidence standard, right to counsel, etc. The hearing officer has the powers and duties noted in Section I.A. Additionally, the hearing officer's conclusions on the issues presented must be supported by findings of fact from the hearing transcript which constitute a preponderance of the evidence at the hearing.

In contrast to the other hearings hereinbefore described, the Department of Education is a party at the show cause hearing. Therefore, the Department has the right to be represented by counsel. Please note, that as with any other party, representatives of the Department, other than counsel, may question witnesses only with the consent of the Department's counsel.

After the hearing in this matter, the hearing officer shall submit his/her opinion to the Secretary of Education for approval. Said opinion will either approve or disapprove the application for private school placement. The opinion may, after adoption by the Secretary as a final order, be appealed to Commonwealth Court.

B. Approved Private School Status

In order for exceptional children to be placed in a private school special education program by the Department, said program must be approved by the Department. The Standards for Approved Private Schools set forth the application procedure to be followed. 22 Pa. Code §171.23. The Standards also set forth rules for operation of the private schools and require periodic reevaluation of approved private schools. If a program application is disapproved or if the program is to be disapproved for failure to operate in accordance with the Standards, the disapproval is considered an adjudication under the Judicial Code. 42 Pa. C.S.A. §§763(a), 5105(a)(2), 5571. The Department must provide the private school with reasonable notice of such action and an opportunity to be heard.

At the hearing the Department first presents its reasons for disapproval of the school. The school may then present evidence to challenge the disapproval. Note that the private school must also comply with the Standards for Special Education, 22 Pa. Code §341.1 et seq. The hearing officer's decision to either approve or disapprove the private school program must be based upon a preponderance of the evidence presented at the hearing.

The hearing officer's decision in this matter is submitted to the Secretary of Education for approval and adoption. Any final orders of the Secretary in this matter may be appealed to Commonwealth Court.

Date ____________________________

SUBPOENA

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

TO:

1. Pursuant to the authority vested in the Secretary of Education by 1 Pa. Code §35.142, you are hereby ordered to come to ________________________________ at ______________________________, Pennsylvania, at _______________.m., to testify on behalf of ___________________________________, and to remain until excused.

2. You are ordered to bring with you the following:

____

____

I hereby attest that I am this day serving this subpoena upon the persons and in the manner indicated below.

Service by certified mail addressed as follows:

WITNESS ___________________________, Hearing Officer, designee of the Secretary of Education, the __________ day of ________, A.D., 1978.

___________(signature)___________

SWORN TO AND SUBSCRIBED
before me this ___ day
of __________, A.D., 1978.

____

FORMAT FOR COVER PAGE FOR HEARING OFFICER DECISION

Name of Student

Birthdate

School District

Intermediate Unit

Date(s) of Hearing

Open or Closed

______________________________ (Signature)

Date of Decision

____

Name of Hearing Officer

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
BOX 911, HARRISBURG, PA. 17126

(Current Date)

Name of Parent/Legal Guardian/Surrogate
Address

Dear ______________________________

Enclosed are my decision and recommendations for the educational placement and program for (Name of Child) ________________.

You may appeal this decision to the Secretary of Education as outlined in the Appeal Procedures distributed at the Due Process Hearing. A duplicate set of Appeal Procedures is also enclosed with this letter.

The persons responsible for implementing this decision are your local school administrators. If you have any questions or concerns about the implementation of the decision, they should be directed to the (Name of School District) ________ and/or Intermediate Unit (number) ________.

A person assigned from the Special Education Regional Review Division will make an on-site visit to the school. He/She will review the action taken to implement this decision, and will report this to the Department of Education.

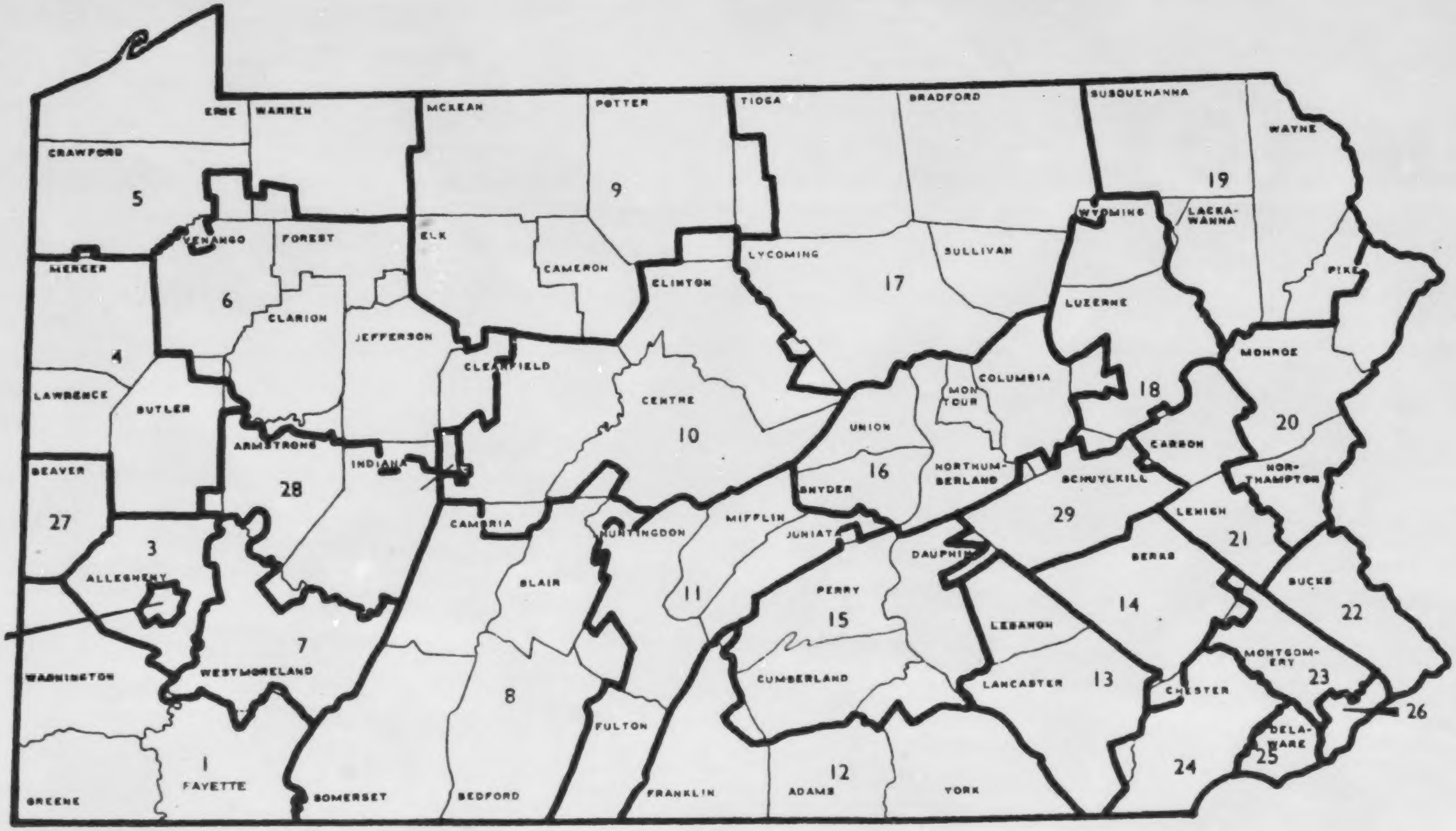
If you experience any difficulty with the prompt implementation of the placement and program decision and recommendation for your child at the local level, please direct your concerns to:

(Name of Regional Reviewer in this School District)
Bureau of Special Education
Division of Regional Review
333 Market Street
Harrisburg, Pennsylvania 17126
Phone: (717) 787-4714

Sincerely,

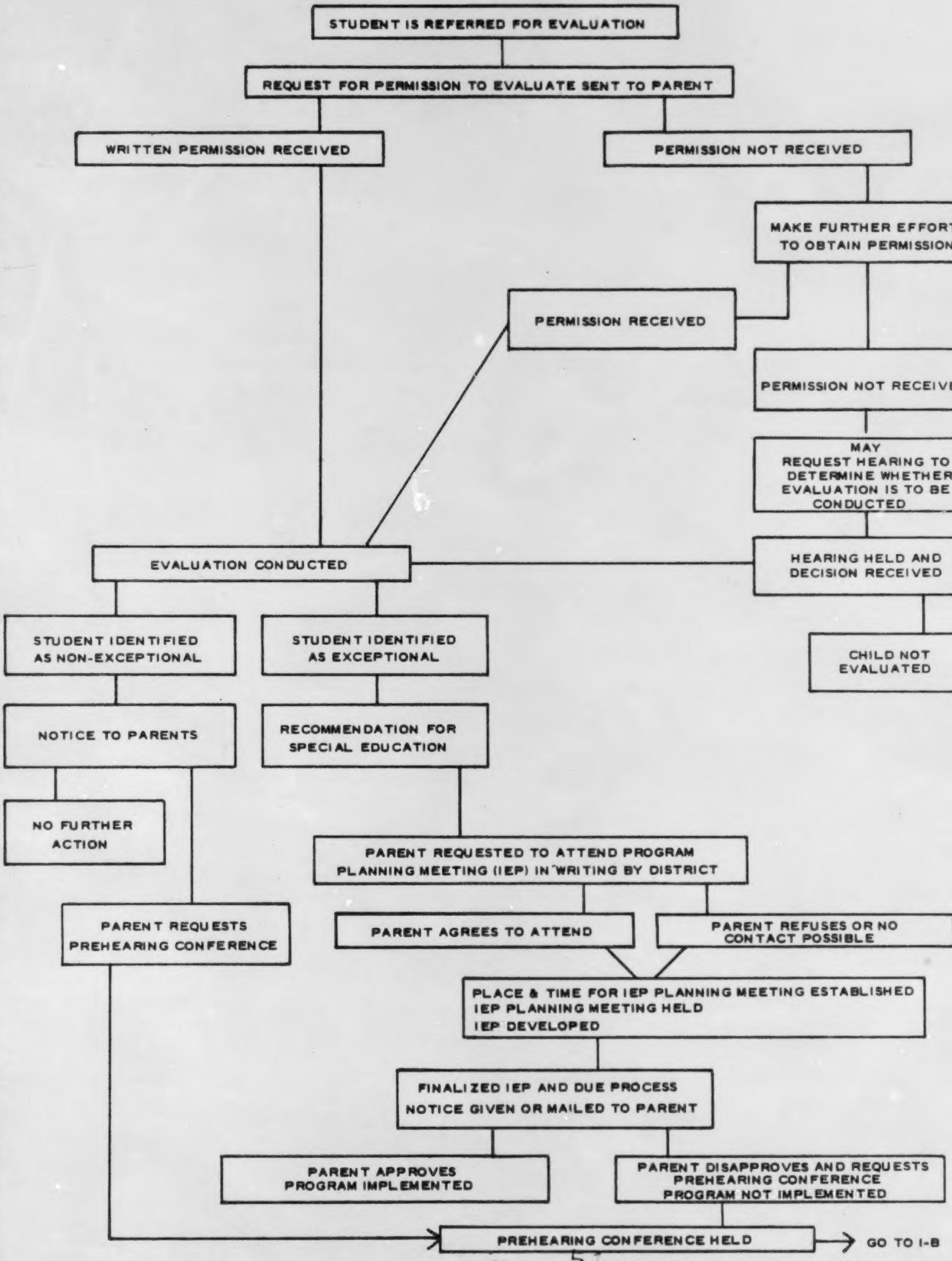
(Signature of Hearing Officer)

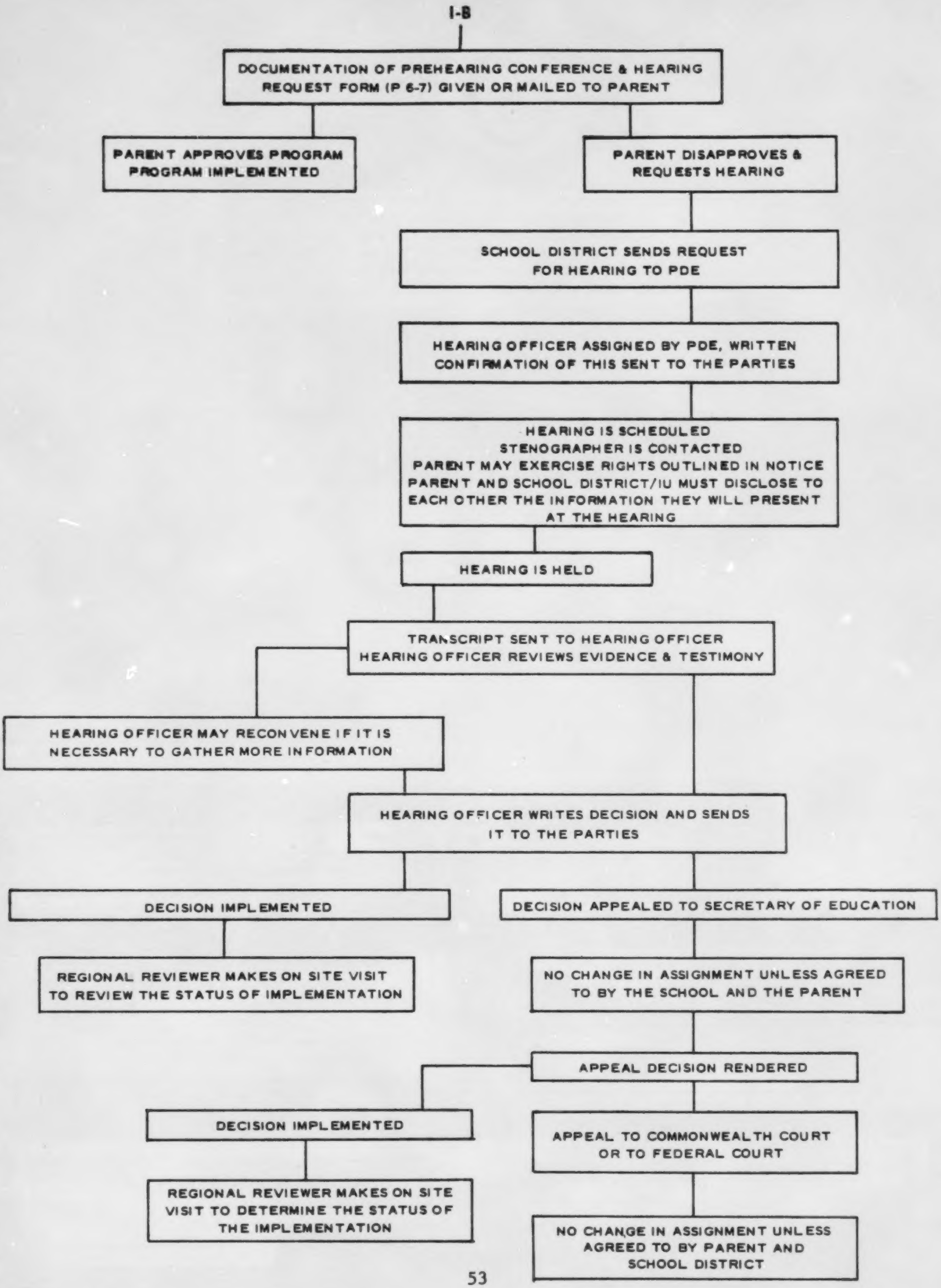
Encl: Hearing Decision on (Name of Child) ________
Appeal Procedure


ERIE
WARREN
MCKEAN
POTTER
TIOGA
BRADFORD
SUSQUEHANNA
WAYNE
CRAWFORD
5
9
19
WYOMING
LACKA-WANNA
VENANGO
FOREST
ELK
CAMERON
CLINTON
LYCOMING
17
SULLIVAN
PIKE
MERCER
6
CLARION
JEFFERSON
LUZERNE
MONROE
4
CLEARFIELD
COLUMBIA
MON TOUR
18
LAWRENCE
BUTLER
CENTRE
10
UNION
20
ARMSTRONG
INDIANA
16
NORTHUM-BERLAND
CARBON
BEAVER
28
SNYDER
SCHUYLKILL
NOR-THAMPTON
27
CAMBRIA
MIFFLIN
29
LEHIGH
3
HUNTINGDON
JUNIATA
21
ALLEGHENY
BLAIR
11
DAUPHIN
BERKS
BUCKS
PERRY
14
22
2
15
LEBANON
7
WESTMORELAND
MONTGOM-ERY
WASHINGTON
8
CUMBERLAND
LANCASTER
13
23
CHESTER
26
FULTON
DELA-WARE
1
12
24
25
FAYETTE
GREENE
SOMERSET
BEDFORD
FRANKLIN
ADAMS
YORK

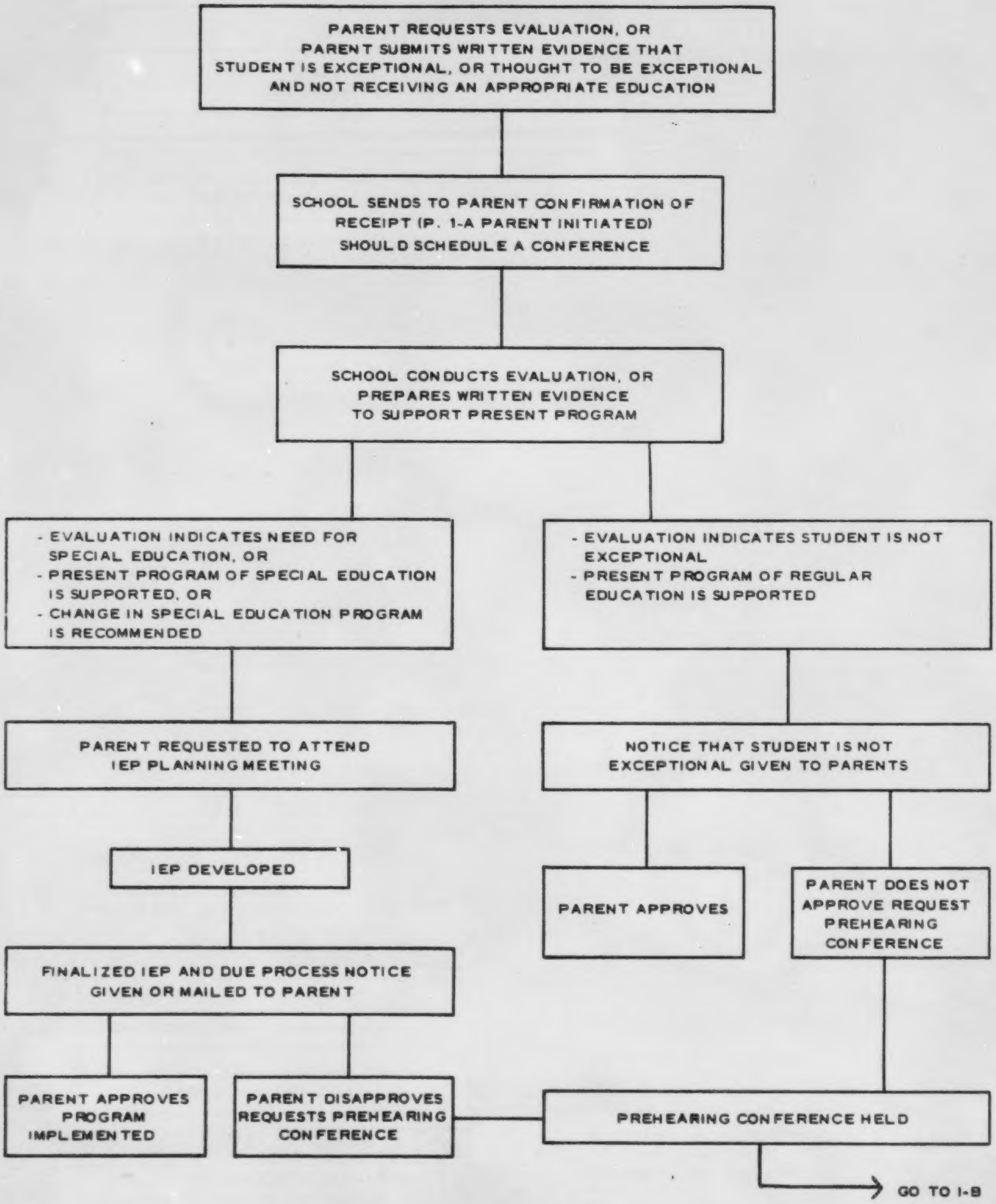
REVIEWER	INTERMEDIATE UNIT	REGION
Rachelle Rickens	4, 5, 6	I
Willard Ziegler	2, 3, 27	II
Charles Orner	1, 7, 28	III
Chet Pilgrim	9, 10, 16, 17	IV
Sally Searight	8, 11, 12	V
Jane Sullivan	13, 14, 15, 29	VI
Lewis Stauffer	18, 19, 20, 21	VII
Norman Reimer	24, 25	VIII
Bambi Cunningham	22, 23	IX
William Murphy	26	X

I. A SCHOOL DISTRICT INITIATED PROCEDURES FOR INITIAL EVALUATION/SPECIAL EDUCATION PLACEMENT (REQUIRED BY CHAPTER 13 AND 341, 22 P.A. CODE)


STUDENT IS REFERRED FOR EVALUATION
REQUEST FOR PERMISSION TO EVALUATE SENT TO PARENT
WRITTEN PERMISSION RECEIVED
PERMISSION NOT RECEIVED
MAKE FURTHER EFFORTS TO OBTAIN PERMISSION
PERMISSION RECEIVED
PERMISSION NOT RECEIVED
MAY REQUEST HEARING TO DETERMINE WHETHER EVALUATION IS TO BE CONDUCTED
EVALUATION CONDUCTED
HEARING HELD AND DECISION RECEIVED
CHILD NOT EVALUATED
STUDENT IDENTIFIED AS NON-EXCEPTIONAL
STUDENT IDENTIFIED AS EXCEPTIONAL
NOTICE TO PARENTS
RECOMMENDATION FOR SPECIAL EDUCATION
NO FURTHER ACTION
PARENT REQUESTED TO ATTEND PROGRAM PLANNING MEETING (IEP) IN WRITING BY DISTRICT
PARENT REQUESTS PREHEARING CONFERENCE
PARENT AGREES TO ATTEND
PARENT REFUSES OR NO CONTACT POSSIBLE
PLACE & TIME FOR IEP PLANNING MEETING ESTABLISHED
IEP PLANNING MEETING HELD
IEP DEVELOPED
FINALIZED IEP AND DUE PROCESS NOTICE GIVEN OR MAILED TO PARENT
PARENT APPROVES PROGRAM IMPLEMENTED
PARENT DISAPPROVES AND REQUESTS PREHEARING CONFERENCE PROGRAM NOT IMPLEMENTED
PREHEARING CONFERENCE HELD
GO TO I-B

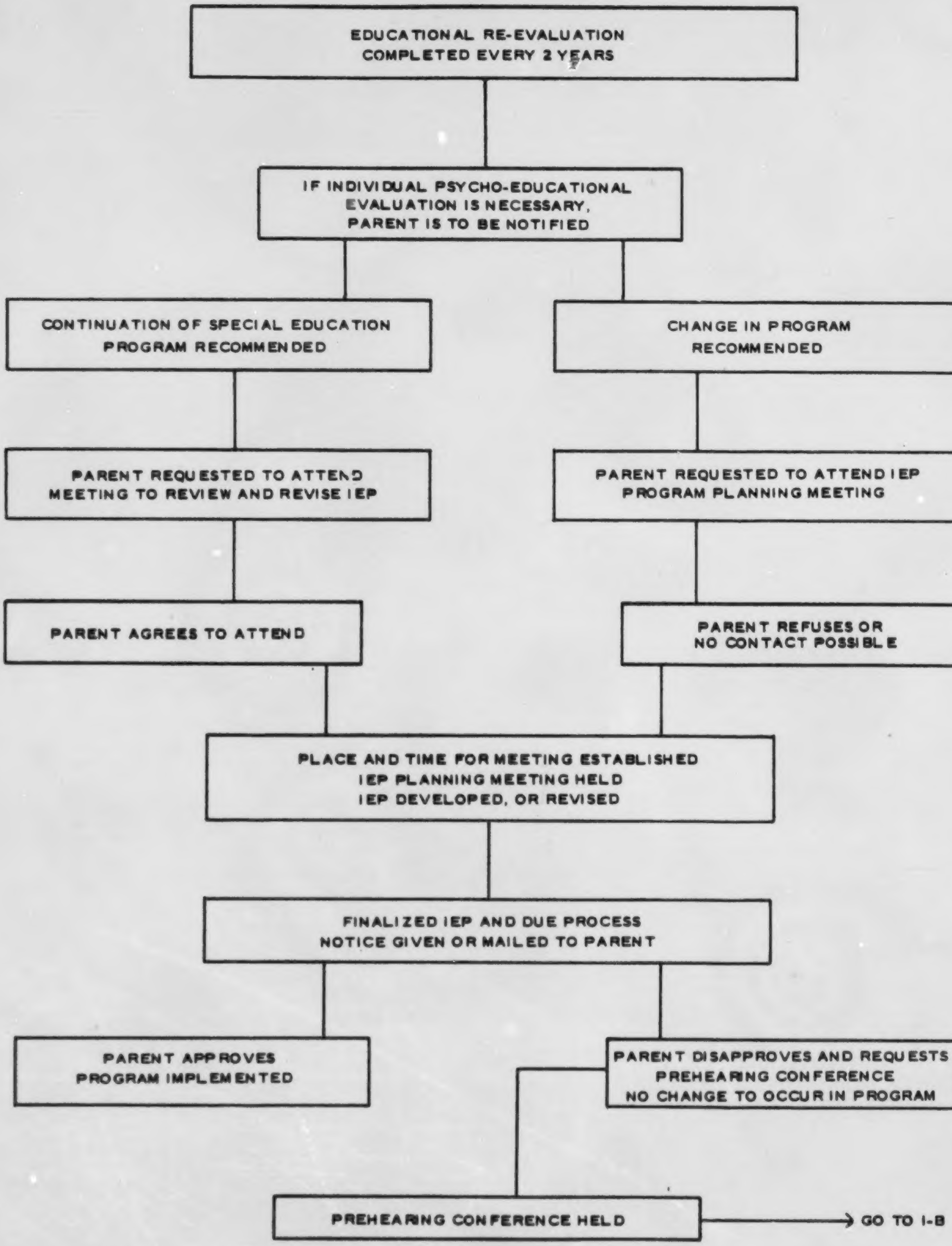

I-B
DOCUMENTATION OF PREHEARING CONFERENCE & HEARING REQUEST FORM (P 6-7) GIVEN OR MAILED TO PARENT
PARENT APPROVES PROGRAM PROGRAM IMPLEMENTED
PARENT DISAPPROVES & REQUESTS HEARING
SCHOOL DISTRICT SENDS REQUEST FOR HEARING TO PDE
HEARING OFFICER ASSIGNED BY PDE, WRITTEN CONFIRMATION OF THIS SENT TO THE PARTIES
HEARING IS SCHEDULED
STENOGRAPHER IS CONTACTED
PARENT MAY EXERCISE RIGHTS OUTLINED IN NOTICE
PARENT AND SCHOOL DISTRICT/IU MUST DISCLOSE TO EACH OTHER THE INFORMATION THEY WILL PRESENT AT THE HEARING
HEARING IS HELD
TRANSCRIPT SENT TO HEARING OFFICER
HEARING OFFICER REVIEWS EVIDENCE & TESTIMONY
HEARING OFFICER MAY RECONVENE IF IT IS NECESSARY TO GATHER MORE INFORMATION
HEARING OFFICER WRITES DECISION AND SENDS IT TO THE PARTIES
DECISION IMPLEMENTED
DECISION APPEALED TO SECRETARY OF EDUCATION
REGIONAL REVIEWER MAKES ON SITE VISIT TO REVIEW THE STATUS OF IMPLEMENTATION
NO CHANGE IN ASSIGNMENT UNLESS AGREED TO BY THE SCHOOL AND THE PARENT
APPEAL DECISION RENDERED
DECISION IMPLEMENTED
APPEAL TO COMMONWEALTH COURT OR TO FEDERAL COURT
REGIONAL REVIEWER MAKES ON SITE VISIT TO DETERMINE THE STATUS OF THE IMPLEMENTATION
NO CHANGE IN ASSIGNMENT UNLESS AGREED TO BY PARENT AND SCHOOL DISTRICT

II.
PARENT INITIATED PROCEDURES
(REQUIRED BY CHAPTER 13 AND 341, 22 PENNSYLVANIA CODE)

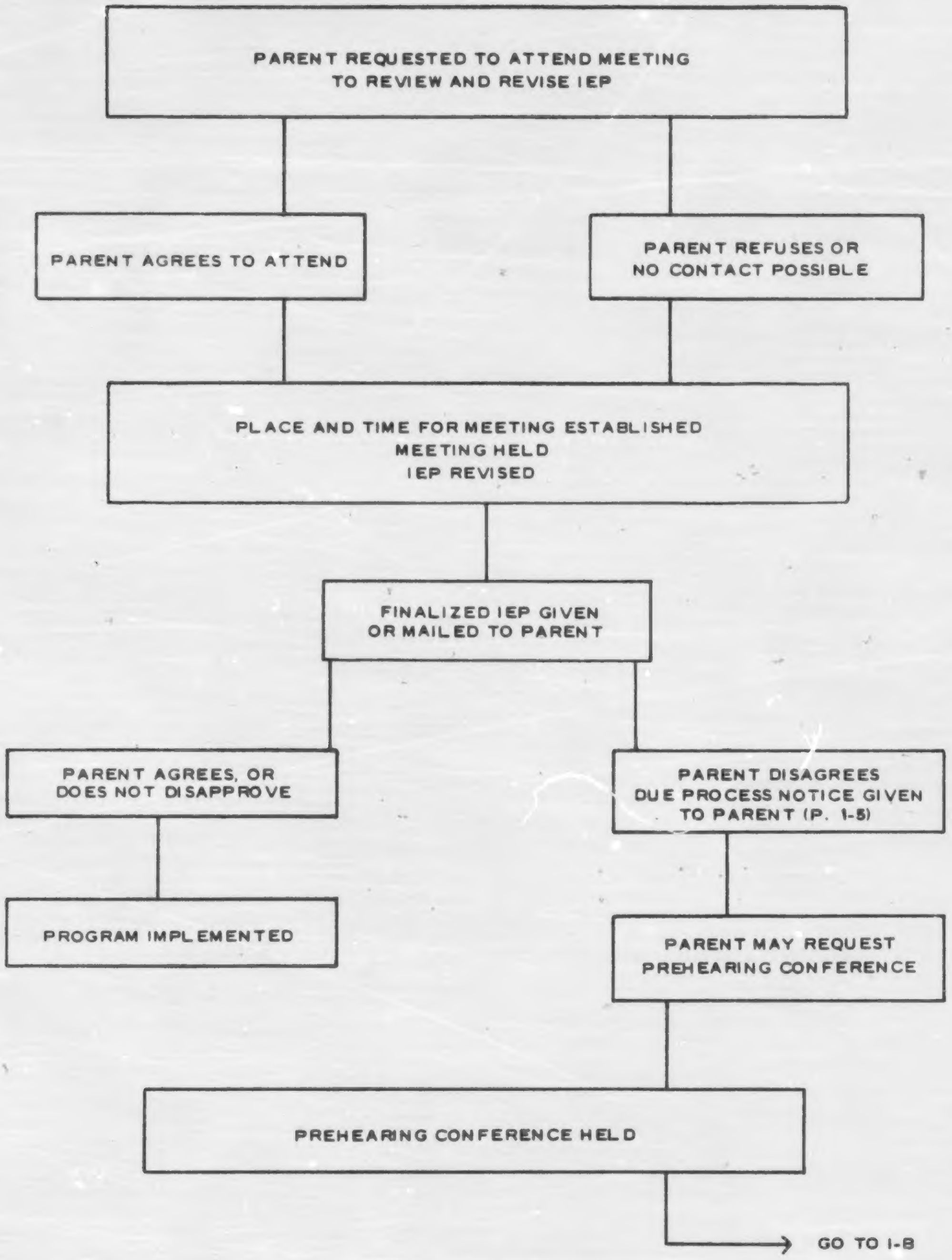

PARENT REQUESTS EVALUATION, OR PARENT SUBMITS WRITTEN EVIDENCE THAT STUDENT IS EXCEPTIONAL, OR THOUGHT TO BE EXCEPTIONAL AND NOT RECEIVING AN APPROPRIATE EDUCATION
SCHOOL SENDS TO PARENT CONFIRMATION OF RECEIPT (P. 1-A PARENT INITIATED) SHOULD SCHEDULE A CONFERENCE
SCHOOL CONDUCTS EVALUATION, OR PREPARES WRITTEN EVIDENCE TO SUPPORT PRESENT PROGRAM
- EVALUATION INDICATES NEED FOR SPECIAL EDUCATION, OR
- PRESENT PROGRAM OF SPECIAL EDUCATION IS SUPPORTED, OR
- CHANGE IN SPECIAL EDUCATION PROGRAM IS RECOMMENDED
- EVALUATION INDICATES STUDENT IS NOT EXCEPTIONAL
- PRESENT PROGRAM OF REGULAR EDUCATION IS SUPPORTED
PARENT REQUESTED TO ATTEND IEP PLANNING MEETING
NOTICE THAT STUDENT IS NOT EXCEPTIONAL GIVEN TO PARENTS
IEP DEVELOPED
PARENT APPROVES
PARENT DOES NOT APPROVE REQUEST PREHEARING CONFERENCE
FINALIZED IEP AND DUE PROCESS NOTICE GIVEN OR MAILED TO PARENT
PARENT APPROVES PROGRAM IMPLEMENTED
PARENT DISAPPROVES REQUESTS PREHEARING CONFERENCE
PREHEARING CONFERENCE HELD
GO TO I-B

III.

PROCEDURES FOR TWO-YEAR RE-EVALUATION AND DUE PROCESS (REQUIRED BY CHAPTER 13 AND 341, 22 PENNSYLVANIA CODE)


EDUCATIONAL RE-EVALUATION COMPLETED EVERY 2 YEARS
IF INDIVIDUAL PSYCHO-EDUCATIONAL EVALUATION IS NECESSARY, PARENT IS TO BE NOTIFIED
CONTINUATION OF SPECIAL EDUCATION PROGRAM RECOMMENDED
CHANGE IN PROGRAM RECOMMENDED
PARENT REQUESTED TO ATTEND MEETING TO REVIEW AND REVISE IEP
PARENT REQUESTED TO ATTEND IEP PROGRAM PLANNING MEETING
PARENT AGREES TO ATTEND
PARENT REFUSES OR NO CONTACT POSSIBLE
PLACE AND TIME FOR MEETING ESTABLISHED IEP PLANNING MEETING HELD IEP DEVELOPED, OR REVISED
FINALIZED IEP AND DUE PROCESS NOTICE GIVEN OR MAILED TO PARENT
PARENT APPROVES PROGRAM IMPLEMENTED
PARENT DISAPPROVES AND REQUESTS PREHEARING CONFERENCE NO CHANGE TO OCCUR IN PROGRAM
PREHEARING CONFERENCE HELD
GO TO I-B

IV.
PROCEDURES FOR ANNUAL REVIEW OF IEP
(REQUIRED BY CHAPTER 341, 22 PENNSYLVANIA CODE)


PARENT REQUESTED TO ATTEND MEETING TO REVIEW AND REVISE IEP
PARENT AGREES TO ATTEND
PARENT REFUSES OR NO CONTACT POSSIBLE
PLACE AND TIME FOR MEETING ESTABLISHED
MEETING HELD
IEP REVISED
FINALIZED IEP GIVEN OR MAILED TO PARENT
PARENT AGREES, OR DOES NOT DISAPPROVE
PROGRAM IMPLEMENTED
PARENT DISAGREES
DUE PROCESS NOTICE GIVEN TO PARENT (P. 1-5)
PARENT MAY REQUEST PREHEARING CONFERENCE
PREHEARING CONFERENCE HELD
GO TO I-B

RESOURCE DEPARTMENTS

Legal Division

John A. Alzamora, Counsel
Ernest N. Helling, Counsel
Takashi Bufford, Counsel
Pennsylvania Department of Education
333 Market Street
P. O. Box 911
Harrisburg, PA 17108
(717) 787-5500

Bureau of Special Education

Linda D. O'Connor
Right to Education Adviser
Pennsylvania Department of Education
333 Market Street
P. O. Box 911
Harrisburg, PA 17108
(717) 787-4714

ARTICLE XI

PROFESSIONAL EMPLOYES

NOTE: For additional provisions relating to professional employes see Sections 3301 to 3374.

(g) Military Service in Time of War or National Emergency

NOTE: For absence during annual training periods see Section 3301. For credit for military service see Section 3327.

Section 1179. Continuation of State Appropriations. During the period of said leave of absence, if a qualified substitute is employed, the Commonwealth shall pay the school board the full amount of State contribution or grant as if the employe were performing his regular school duties for the school board.

ARTICLE XIII

PUPILS AND ATTENDANCE

(a) Attendance

Section 1305. Non-resident Child Placed in Home of Resident. (a) When a non-resident child is placed in the home of a resident of any school district by order of court or by arrangement with an association, agency, or institution having the care of neglected and dependent children, such resident being compensated for keeping the child, any child of school age so placed shall be entitled to all free school privileges accorded to resident school children of the district, including the right to attend the public high school maintained in such district or in other districts in the same manner as though such child were in fact a resident school child of the district. (Subsection (a) amended February 17, 1956, P.L. 1065.)

(b) Any resident of any school district, before accepting custody of a non-resident child of school age for compensation by order of court or by arrangement with an association, agency, or institution having the care of dependent or neglected children, must secure, from the superintendent of schools or school board in that district, a statement in writing that the child can be accommodated in the schools of the district or that the child can not be accommodated and the reasons therefor. If such statements are not furnished within two weeks after a request in writing has been made to the board's secretary, [or][1] the superintendent of schools, the board's assent shall be assumed, and the child shall be admitted to the schools of the district as a pupil. If such statement sets forth conditions such as to exempt the district under this section from accepting the child as a pupil, and if such exemption is not disapproved on appeal by the Superintendent of Public Instruction, and if other arrangement for the child's schooling satisfactory to the district superintendent is not made, the child may not be placed in the district.

Appeal from the claim of any school district for exemption, as provided in this section, may be taken to the Superintendent of Public Instruction, and his decision thereon after investigation shall be final. (Subsection (b) amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971).

Section 1306. Non-resident Inmates of Children's Institutions. (a) The board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children's home, or other institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such districts, to attend the public schools in said district, either with or without charge for tuition, textbooks, or school supplies, as the directors of the district in which such institution is located may determine. When any home or institution having for its purpose the care and training of children and having non-resident children under its care, is located in more than one school district, educational facilities may be provided by either district as though the institution were located wholly in that district. If the district or districts in which the institution is located does not have facilities to accommodate the children in its schools or in a joint school of which it is a member, the board of directors shall so notify the Superintendent of Public Instruction not later than July one. If the Superintendent of Public Instruction, after investigation, finds that neither the school district nor the joint school board, if any, can accommodate the non-resident inmates of the institution during the ensuing school term, he shall direct the district and the joint school board, if any, to enter into an agreement with another school district or joint school board to accept them on a tuition basis.

(b) Whenever non-resident children attend the public schools in such district, they shall be furnished proper transportation provided for resident children, and the district furnishing or providing the transportation shall be reimbursed in the same manner as provided for resident children. (Amended September 7, 1955, P.L. 583, and February 17, 1956, P.L. 1067.)

Section 1307. Counties, Other Than Second Class, Responsible for Payment of Tuition. In any county, other than a county of the second class, whenever any child is an inmate of an orphan asylum or home or a children's home or a home for the friendless or a private home or other institution for the care or training of orphans or other children, and the maintenance of such children is provided at the cost of the county or the county institution district wherein it is located, and such child attends the public schools of the school district wherein such home or institution is located, although not a legal resident of

State or[1] local revenues, during the school year 1974-1975, shall be eliminated. No school districts shall be required, pursuant to any section of this act, to offer auxiliary services provided by any other school districts within such intermediate units.

(d) Allocations. In July of **[1975]** *1977* and annually thereafter in July, the Secretary of Education shall allocate to each intermediate unit an amount equal to the number of nonpublic school students as of October 1 of the preceding school year who are enrolled in nonpublic schools within the intermediate unit times **[forty-five dollars ($45)]** *seventy-two dollars ($72)*. The Secretary of Education shall increase this figure on a proportionate basis whenever **[the maximum reimbursable limit for the basic instructional subsidy under section 2502 of this act (presently seven hundred fifty dollars ($750)) is increased]** *there is an increase in the median actual instruction expense per WADM as defined in clause (12.1) of section 2501 of this act*. The Commonwealth shall pay to each intermediate unit fifteen per centum (15%) of its allocation on August 1, seventy-five per centum (75%) on October 1, and the remaining ten per centum (10%) on the first day of February.

(e) Limitations. The intermediate unit shall not use more than six per centum (6%) of the funds it receives for administration or eighteen per centum (18%) for rental of facilities. The Department of Education shall not use more than one per centum (1%) of the funds it allocates under this section for administrative expenses. If all funds allocated by the intermediate units to administration, or rental facilities are not expended for those purposes, such funds may be used for the program costs.

(f) Interest. There shall be no adjustment in the allocation as provided in subsection (d) because of interest earned on the allocations by the intermediate units. Interest so earned shall be used for the purpose of this section but shall not be subject to the limitations of subsection (e).

(g) Preliminary Budget. Annually, each intermediate unit shall submit to the secretary a preliminary budget on or before January 31 and a final budget on or before June 15, for the succeeding year; and shall file a final financial report on or before October 31 for the preceding year.

ARTICLE X

DISTRICT AND ASSISTANT SUPERINTENDENTS

(Heading amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

(a) Provisions of General Application

Section 1005. Enforcement of Branches of Study; Withholding State Appropriations. It shall be the duty of each district superintendent to see that in every district there shall be taught the several branches required by this act, as well as other branches as the board of school directors may require.

In case the board of school directors of any school district shall fail to provide competent teachers to teach the several branches required in this act, it shall be the duty of the district superintendent to notify the board of school directors, in writing, of its neglect. In case provision is not made forthwith for teaching of branches aforesaid, he shall report such fact to the Superintendent of Public Instruction, whose duty it shall be to withhold any order for such district's share of the State appropriation until the district superintendent shall notify him that competent teachers of such branches have been employed. In case of neglect or refusal by the board of school directors to employ competent teachers, for one month after receiving notice from the district superintendent that such teachers have not been provided, such district shall forfeit absolutely its whole share of the State appropriation for that year. (Amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

PUBLIC SCHOOL CODE OF 1949

(Approved March 10, 1949, P. L. 30.)

ARTICLE XIII

PUPILS AND ATTENDANCE

(a) Attendance

Section 1301. Age Limits; Temporary Residence. Every child, being a resident of any school district between the ages of six (6) and twenty-one (21) years, may attend the public schools in his district, subject to the provisions of this act. The board of school directors of any school district may admit to the schools of the district, with or without the payment of tuition, any nonresident child temporarily residing in the district, and may require the attendance of such nonresdent child in the same manner and on the same conditions as it requires the attendance of a resident child.

(f) Exceptional Children

Section 1371. Definition of Exceptional Children; Reports; Examination. (1) The term "exceptional children" shall mean children of school age who deviate from the average in physical, mental, emotional or social characteristics to such an extent that they require special educational facilities or services and shall include all children in detention homes. (Clause (1) amended August 8, 1963, P.L. 593.)

(2) It shall be the duty of the district superintendent, in every school district in accordance with rules of procedure perscribed by the Superintendent of Public Instruction, to secure information and report to the proper intermediate unit, on or before the fifteenth day of October of each year, and thereafter as cases arise, every exceptional child within said district. As soon thereafter as possible the child shall be examined by a person certified by the Department of Public Instruction as a public school psychologist, and also by any other expert which the type of handicap and the child's condition may necessitate. A report shall be made to the proper intermediate unit of all such children examined and of all children residing in the district who are enrolled in special classes. (Clause (2) amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

Section 1372. Exceptional Children; Education and Training. (1) Standards for Proper Education and Training of Exceptional Children. The State Board of Education shall adopt and prescribe standards and regulations for the proper education and training of all exceptional children by school districts or counties singly or jointly. The Department of Public Instruction shall have power, and it shall be its duty, to determine the counties which shall be joined for the purpose of providing proper education and training of exceptional children. Standards and regulations shall recognize such factors as number of exceptional children, types of handicaps, facility of transportation, adequacy of existing provisions for exceptional children, and availability of school plant facilities. (Amended October 21, 1965, P.L. 601.)

(2) Plans for Education and Training Exceptional Children. Each intermediate unit, cooperatively with other intermediate units and with school districts shall prepare and submit to the Superintendent of Public Instruction, on or before the first day of August, one thousand nine hundred seventy for his approval or disapproval, plans for the proper education and training of all exceptional children in accordance with the standards and regulations adopted by the State Board of Education. Plans as provided for in this section shall be subject to revision from time to time as conditions warrant, subject to the approval of the Superintendent of Public Instruction. (Clause (2) amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

(F1) (3) Special Classes or Schools Established and Maintained by School Districts. Except as herein otherwise provided, it shall be the duty of the board of school directors of every school district to provide and maintain, or to jointly provide and maintain with neighboring districts, special classes or schools in accordance with the approved plan. The **[Superintendent of Public Instruction]** ***Secretary of Education*** shall superintend the organization of such special classes and such other arrangements for special education and shall enforce the provisions of this act relating thereto. If the approved plan indicates that it is not feasible to form a special class in any district or to provide such education for any such child in the public schools of the district, the board of school directors of the district shall secure such proper education and training outside the public schools of the district or in special institutions, or by providing for teaching the child in his home, in accordance with rules and regulations prescribed by the Department of **[Public Instruction]** *Education*, on terms and conditions not inconsistent with the terms of this act or of any other act then in force applicable to such children. ***However, the institution of special classes and programs at the secondary level for exceptional children who are gifted and talented students may be deferred until September 1978 at the discretion of the board of the school directors of any school district.***

In addition to the above and in accordance with rules and regulations prescribed by the Department of **[Public Instruction]** *Education*, homebound instruction shall be provided for children confined in detention homes as provided in section 7, act of June 2, 1933 (P.L.1433, No.311), as amended, for the period of their confinement, if their confinement exceeds or is expected to exceed ten days, even though such children are not exceptional.

(4) Classes for Exceptional Children. The intermediate unit shall have power, and it shall be its duty, to provide, maintain, administer, supervise and operate such additional classes or schools as are necessary or to otherwise provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for. (Clause (4) amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

(5) Day Care Training Centers, Classes and Schools for the Proper Education and Training of Exceptional Children. Where in the judgment of the Superintendent of Public Instruction, the provisions of this act relating to the proper education and training of exceptional children have not been complied with or the needs of exceptional children are not being adequately served, the Department of Public Instruction is hereby authorized to provide, including the payment of rental when necessary, maintain, administer, supervise and operate classes and schools for the proper education and training of exceptional children. Pupil eligibility for enrollment in classes for exceptional children shall be determined according to standards and regulations promulgated by the State Board of Education. For each child enrolled in any special class or school for exceptional children operated by the Department of Public Instruction, the school district in which the child is resident shall pay to the Commonwealth, a sum equal to the "tuition charge per elementary pupil" or the "tuition charge per high school pupil" as determined for the schools operated by the district or by a joint board of which the district is a member, based upon the costs of the preceding school term as provided for in section two thousand five hundred sixty-one of the act to which this is an amendment plus a sum equal to ten (10) percentum of such tuition charges. In the event that any school district has not established such "tuition charges per elementary pupil" or "tuition charge per high school pupil," the Superintendent of Public Instruction shall fix a reasonable charge for such district for the year in question. In order to facilitate such payments by the several school districts, the Superintendent of Public Instruction shall withhold from any moneys due to such district out of any State appropriation, except from reimbursement due on account of rentals as provided in section two thousand five hundred eleven point one of the act to which this is an amendment, the amounts due by such school districts to the Commonwealth. All amounts so withheld are hereby specifically appropriated to the Department of Public Instruction for the maintenance and administration of centers and classes for exceptional children. (Clause (5) amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

(6) Pupils Credited to District of Residence. The average daily membership of pupils enrolled in classes and schools for exceptional children, operated by an intermediate unit or by the Department of Public Instruction, shall be credited to the school district of residence for the purpose of determining the district's "teaching units" to be used in calculating the district's reimbursement fractions or weighted average daily membership to be used in calculating a district's aid ratio and in determining payments to the district on account of instruction as provided in section two thousand five hundred two of the act to which this is an amendment. (Clause (6) amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

Section 1372.1. Speech and Hearing Rehabilitation Centers. (Repealed September 1, 1959, P.L. 795.)

NOTE: Powers were given to and duties were imposed upon the Department of Health in connection with the rehabilitation of persons with speech and hearing defects by the Act of September 1, 1959, P.L. 795.

Section 1372.1. Day Care Training Centers for the Proper Training of Mentally Handicapped Children. (Repealed March 29, 1956, P.L. 1356.)

Section 1373. State Reimbursement; Reports. School districts maintaining special classes in the public schools or special public schools or providing special education, as specified in this subdivision of this article, shall receive reimbursement, as provided by this act, so long as such classes, such schools, and such special education are approved by the Department of Public Instruction as to location, constitution and size of classes, conditions of admission and discharge of pupils, equipment, courses of study, methods of instruction, and qualification of teachers.

On or before the first day of November of each year, the secretary of the board of school directors in each district in which special education for exceptional children is provided shall make such reports as may be required by the Department of Public Instruction, in regard to such special education being maintained for the current school year for which approval is desired. (Amended October 21, 1965, P.L. 601.)

Section 1373.1. Readers; Helpers; Guides; Aids; Appliances; etc.; Reimbursement. The Commonwealth shall reimburse school districts out of the moneys appropriated to the Department of Public Instruction for special education for the cost of readers, helpers, guides, aids, appliances, special school books and supplies and devices for any child between the ages of six and twenty-one years of age who is blind, partially sighted, deaf, hard of hearing, or afflicted with cerebral palsy; and who is enrolled, with the approval of the Department of Public Instruction, in any of the public schools of the Commonwealth, an amount equal to the costs of these services and equipment multiplied by the district's aid ratio. (Amended December 6, 1967, Act No. 325.)

No such expenditures nor purchases may be made by any school district unless in accordance with a budget submitted by the district and approved by the Department of Public Instruction. The total expenditure by the Commonwealth hereunder shall not exceed seventy-five per cent of a sum which would have been expended for the tuition and maintenance of any such child in a residential school for the blind, including partially sighted, deaf, hard of hearing, or those afflicted with cerebral palsy, that has been approved by the Department of Public Instruction for the education of the blind, partially sighted, deaf, hard of hearing, or those afflicted with cerebral palsy.

The services of such readers, helpers and guides may be contracted and paid for by the school district irrespective of the age of the person rendering such assistance and of the employment of such person by the school district as a teacher or otherwise and of the time and place where such services are rendered.

The Department of Public Instruction shall establish such necessary rules, regulations and standards as it may deem necessary for carrying out the provisions of this act. (Amended December 22, 1965, P.L. 1214.)

Section 1374. Free Transportation or Board and Lodging. Any exceptional child, who is regularly enrolled in a special class that is approved by the Department of Public Instruction, or who is enrolled in a regular class in which approved educational provisions are made for him, may be furnished with free transportation by the school district. When it is not feasible to provide such transportation the board of school directors may in lieu thereof pay for suitable board and lodging for any such child. If free transportation or board and lodging is not furnished for any exceptional child who, by reason thereof, is unable to attend the class or center for which he is qualified, the intermediate unit shall provide the transportation necessary. (Amended January 14, 1970, Act No. 192 (1969), effective July 1, 1971.)

Section 1375. Uneducable Children Provided for by Department of Public Welfare. The State Board of Education shall establish standards for temporary or permanent exclusion from the public school of children who are found to be uneducable and untrainable in the public schools. Any child who is reported by a person who is certificated as a public school psychologist as being uneducable and untrainable in the public schools, may be reported by the board of school directors to the Superintendent of Public Instruction and when approved by him, in accordance with the standards of the State Board of Education, shall be certified to the Department of Public Welfare as a child who is uneducable and untrainable in the public schools. When a child is thus certified the public schools shall be relieved of the obligation of providing education or training for such child. The Department of Public Welfare shall thereupon arrange for the care, training, and supervision of such child in a manner not inconsistent with the laws governing mentally defective individuals. (Amended October 21, 1965, P.L. 601.)

in any of the schools or institutions for the blind or deaf, or cerebral palsied and/or brain damaged and/or muscular dystrophied ***and/or mentally retarded, and/or socially and emotionally disturbed,*** under the supervision of, subject to the review of or approved by the Department of Education, in accordance with standards and regulations promulgated by the Council of Basic Education, the school district in which such child is resident shall pay twenty-five per centum (25%) of the cost of tuition and maintenance of such child in such school or institution, as determined by the Department of Education; and the Commonwealth shall pay, out of funds appropriated to the department for special education, seventy-five per centum (75%) of the cost of their tuition and maintenance, as determined by the Department. If the residence of such child in a particular school district cannot be determined, the Commonwealth shall pay, out of moneys appropriated to the department for special education, the whole cost of tuition and maintenance of such child. **[In no event shall the total cost of tuition and maintenance for residential students exceed five thousand five hundred dollars ($5,500) per year for tuition of deaf or blind day students, four thousand one hundred twenty-five dollars ($4,125) per year and for tuition of cerebral palsied and/or brain damaged and/or muscular dystrophied day students three thousand five hundred dollars ($3,500) per year.]** ***In no event shall the total cost of tuition and maintenance for blind, deaf, cerebral palsied and/or brain damaged and/or muscular dystrophied and/or socially and emotionally disturbed and/or mentally retarded residential students exceed eight thousand five hundred dollars ($8,500) per year, for tuition of blind, deaf, cerebral palsied and/or muscular dystrophied day students exceed five thousand one hundred dollars ($5,100) per year, and for tuition of brain damaged and/or socially and emotionally disturbed and/or mentally retarded day students exceed four thousand one hundred dollars ($4,100) per year. The Department of Education shall be provided with such financial data from private schools as may be necessary to determine the reasonableness of charges for tuition and room and board of the institution made on Pennsylvania resident approved reimbursed students. The Department of Education shall evaluate such data and shall disallow any charge deemed unreasonable. Any charges deemed unreasonable by the Department of Education for disallowance shall be considered an adjudication within the meaning of the act of June 4, 1945 (P.L.1388, No.442), known as the "Administrative Agency Law," and regulations promulgated thereunder.***

(b) When any person less than six (6) or more than twenty-one (21) years of age resident in this Commonwealth, who is blind or deaf, or afflicted with cerebral palsy and/or brain damage and/or muscular dystrophy, is enrolled, with the approval of the Department of Education, as a pupil in any of the schools or institutions for the blind or deaf, or cerebral palsied and/or brain damaged and/or muscular dystrophied, under the supervision of or approved by the Department of Education, the Commonwealth shall pay to such school or institution, out of moneys appropriated to the department for special education, the cost of tuition and maintenance of such person, as determined by the Department of Education, subject to review and approval in accordance with standards and regulations promulgated by the Council of Basic Education, and in addition, in the case of any child less than six (6) years of age, who is blind, the cost, as determined by the Department of Education of instructing the parent of such blind child in caring for such child. In no event shall the total cost of tuition and maintenance for and integral part of its on-going approved program and where the department deems such program to be necessary because of the unavailability of an appropriate program for such students, the maximum rate payable shall be increased by the audited cost of the program per approved Pennsylvania resident enrolled in the program.

(f) Where the private institution provides special education programs for multihandicapped students which is adjudged necessary by the Department of Education, the maximum rate payable shall be increased by seventy-five percent (75%) for the second severe handicap, eighty-five percent (85%) for the third severe handicap and one hundred percent (100%) for more than three severe handicaps.

F2 Section 1376.1. Actual Cost of Tuition and Maintenance of Certain Exceptional Children in the Four Chartered Schools for Education of the Deaf and the Blind. (a) The following term, whenever used or referred to in this section, shall have the following meaning. "Chartered School" shall mean any of the four (4) chartered schools for the education of the deaf or the blind; the Pennsylvania School for the Deaf; the Overbrook School for the Blind; the Western Pennsylvania School for Blind Children; and the Western Pennsylvania School for the Deaf.

(b) When any child of school age resident in this Commonwealth, who is blind or deaf, is enrolled with the approval of the Department of Education as a pupil in any of the four (4) chartered schools in accordance with standards and regulations promulgated by the Council of Basic Education, the school district in which such child is resident shall pay twenty percent (20%) of the actual cost of tuition and maintenance of such child in such institution, as determined by the Department of Education; and the Commonwealth shall pay, out of funds appropriated to the department for special education, eighty percent (80%) of the actual cost of their tuition and maintenance, as determined by the department. If the residence of such child in a particular school district cannot be determined, the Commonwealth shall pay, out of moneys appropriated to the department for special education, the whole cost of tuition and maintenance of such child. The Department of Education shall be provided with such financial data from each of the chartered schools as may be necessary to determine thereasonableness of charges for tuition and room and board of each of the chartered schools made on Pennsylvania resident approved students. The Department of Education shall evaluate such data and shall disallow any charges deemed unreasonable. Any charge deemed unreasonable by the Department of Education for disallowance shall be considered an adjudication within the meaning of Title 2 of the Pa.C.S. (relating to administrative law and procedure and regulations promulgated thereunder.

(c) When any person less than school age resident in this Commonwealth who is blind or deaf is enrolled, with the approval of the Department of Education, as a residential pupil in any of the four (4) chartered schools, the Commonwealth shall pay to the school, out of moneys appropriated to the department for special education, the actual cost of tuition and maintenance of such person, as determined by the Department of Education, subject to review and approval in accordance with standards and regulations promulgated by the Council of Basic Education, and in addition, in the case of any child less than school age, who is blind, the cost, as determined by the Department of Education of instructing the parent of such blind child in caring for such child.

(d) None of the chartered schools receiving payment in accordance with this section shall impose any charge on the student and/or parents who are approved reimbursable residents for a program of instruction and maintenance appropriate to the child's needs; except that charges for programs not part of the normal school year may be made.

F2 Section 1377. Payment of Cost of Tuition and Maintenance of Certain Exceptional Children. (a) To facilitate payments by the several school districts to the schools or institutions in which deaf or blind, or cerebral palsied and/or brain damaged and/or muscular dystrophied, or socially and emotionally disturbed or mentally retarded children are enrolled, of amounts due by such districts for their proportion of the cost of tuition and maintenance of such children, the Secretary of Education shall withhold from any moneys due to such districts out of any State appropriation for the assistance as reimbursement of school districts, the amounts due by such districts to such schools or institutions for the blind or the deaf, or the cerebral palsied and/or brain damaged and/or muscular dystrophied or the socially and emotionally disturbed and/or mentally retarded. Amounts so withheld shall be paid to such schools or institutions by warrant of the Auditor General upon the State Treasurer, after requisition of the Secretary of Education, for which purpose all amounts so withheld are hereby specifically appropriated to the Department of Education.

(b) Payments of the Commonwealth's proportion of the cost of tuition and maintenance of blind or deaf, or cerebral palsied and/or brain damaged and/or muscular dystrophied, or socially and emotionally disburbed and/or mentally retarded pupils enrolled in schools or institutions for the blind or for the deaf, or for the cerebral palsied and/or brain damaged and/or muscular dystrophied, or for the socially and emotionally disturbed and of the cost of instruction of parents of blind pupils less than six (6) years of age, as hereinbefore provided, shall be made quarterly, out of moneys appropriated to the Department of Education for special education, by warrant of the Auditor General upon the State Treasurer, after requisition by the Secretary of Education. Except for the provisions of section 1376.1 providing for the actual cost of tuition and maintenance of certain exceptional children in the four chartered schools for education of the deaf and of the blind, in no event shall the total payment for the cost of tuition and maintenance of any such child exceed the rates per year allowed under section 1376. The maximum amount payable for the cost of tuition and maintenance of such children shall be subject to review at least once every two years for the purpose of recommending an adjustment thereof.

(c) For the purpose of enabling the Department of Education to determine from time to time what amounts are due to schools for the blind or for the deaf or for the cerebral palsied and/or brain damaged and/or muscular dystrophied or for the socially and emotionally disturbed and/or mentally retarded hereunder, such schools shall forward to the department, at such times and in such form as the department shall prescribe, sworn statements setting forth the names, ages, and residences of all pupils enrolled hereunder, specifying the school districts liable for a part of the cost of tuition and maintenance of any such pupils, the per capita cost of and maintenance of pupils, and such other information as the department shall require.

For the purpose of providing adequate administration of the program and to carry out the preaudit functions authorized in section 1376(a), one-half of one percent (.50%) of the total appropriations for approved private schools from all funds shall be allocated to the Department of Education.

(Amended May 31, 1979, Act No. 11)

Section 1378. Medical Care for Children Under Six with Defective Hearing. Whenever the county medical director of the Department of Health reports to the medical examiner of any school district a case of a minor under six (6) years of age who is totally deaf or whose hearing is impaired, who is not receiving adequate care and treatment, and whose parent or guardian is financially unable to provide the same, such medical examiner shall provide such care and treatment at the expense of the school district or of the Commonwealth, as the case may be, charged by law with the providing of medical examinations for the schools of the school district. Such care and treatment may be administered by the medical examiner or by some doctor of medicine selected by him.

NOTE: This section and Section 1379 were derived from the Act of July 2, 1937, P.L. 2721, which was repealed in so far as it confers powers or imposes duties or liabilities on school districts or on the Superintendent of Public Instruction. The balance of the permanent provisions of the act not repealed, are as follows:

It shall be the duty of every attending or consulting physician, nurse, parent, or guardian, having charge of any minor under six years of age who is totally deaf or whose hearing is impaired, to report at once in person or in writing to the State Department of Health, stating the name, age, and residence of such minor, and furnish such additional information with respect to such minor as the Department of Health shall require. Thereupon, the department shall refer the facts relative to such minor to its county medical director, to ascertain whether such minor is receiving adequate care and treatment. If the county medical director finds that such adequate care and treatment are not provided, and that the parent or guardian is financially unable to provide the same, he shall report the case to the medical inspector of the school district. * * * *

The Department of Health shall, in every instance, notify the Superintendent of Public Instruction of its disposition of the case, and the name of the county medical director and medical inspector of schools to whom the same was referred.

Section 1379. Children Under Six with Defective Hearing; Parent or Guardian Advised of Schools, etc. Whenever notified by the Department of Health of the case of a minor under six (6) years of age, who is totally deaf or whose hearing is impaired, the Superintendent of Public Instruction, when in his judgment the same is deemed desirable, shall communicate to the parent or guardian the location of any special schools, and also the nearest public school having special classes for the instruction of the hard of hearing, with the information concerning the advantages offered by such school or classes, the benefits to accrue to the child from attending such school or classes, and the manner in which the expenses of such instruction will be provided for.

NOTE: See Note to preceding section.

Section 1380. Education of Blind Children Under Eight Years. The Department of Public Instruction is authorized to educate blind children, residing in this Commonwealth, under the age of eight (8) years, whenever, from any cause, the parent or parents thereof may be unable properly to educate them. With the written consent of the parents, parent, or nearest relative, if there be no parents, or the local authorities of the proper institution district, if there be neither parents nor relatives, the Department of Public Instruction may contract with any nonsectarian institution of this State, or elsewhere, established for the education of the blind, whereby any such child may, at a cost not exceeding three dollars ($3) per day, be paid by the Commonwealth, out of funds appropriated to the Department of Public Instruction for the education of blind children, be educated until the child shall reach the age of eight (8) years. Such education may be continued beyond the age of eight (8) years, when, for physical, mental or other proper reasons, such child or children need special care for a longer period. The contract may be canceled and the child or children removed at any time by the Department of Public Instruction. The provisions of this section shall not repeal or modify any existing acts relative to the education of the blind. (Amended October 21, 1965, P.L. 601.)

Section 1381. Higher Education for Blind or Deaf Students. The Department of Public Instruction is authorized to make provision for defraying the necessary expense of any students who are blind or deaf and are regularly enrolled students pursuing any course of study, profession, art, or science in any university, college, conservatory of music, normal, professional, or vocational school approved by the Department of Public Instruction, and who are residents of the Commonwealth. Before any contract is entered into, the Department of Public Instruction shall make a careful investigation of all circumstances surrounding the case. If, after such investigation, it appears that any blind or deaf student who desires to attend any such school or institution, or who is attending such school or institution, seems to be fitted for special work, the Department of Public Instruction is authorized to expend the necessary amount, out of the general sum appropriated for this purpose, not to exceed five hundred dollars ($500) per year for each such blind or deaf student.

Section 1382. Period of Instruction. The time for which pupils of this Commonwealth may be taught in institutions or schools for the instruction of the blind or for the deaf, in whole or in part, at the expense of the Commonwealth, shall extend to such number of years from the time of entering said institutions or schools as may be approved by the Department of Public Instruction.

Cross References

This section cited in 22 Pa. Code § 13.32 (relating to School District initiated due process procedures).

CHAPTER 13. SPECIAL EDUCATION

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Authority

The provisions of this Chapter 13 issued under act of March 10, 1949 (P.L. 30, No. 14), §§501, 925, 1001-1002, 1052, 1054-57, 1059-1060, 1066-1068, 1142, 1146, 1162, 1326-1330(2), 1371-1382, 1401-1422, 2509-2510.1 and 2541 (24 P.S. §§ 5-502, 9-925, 10-1001-1002, 10-1052, 10-1054-1057, 10-1059-1060, 10-1066-1068, 11-1142, 11-1146, 11-1162, 13-1326-1330(2), 13-1371-1382, 13-1301-1422, 25-2509-2510.1, and 25-2541), unless otherwise noted.

Source

The provisions of this Chapter 13 adopted June 12, 1975, 5 Pa.B. 1541, amended June 17, 1977, 7 Pa.B. 1636, unless otherwise noted.

Subchapter A. GENERAL PROVISIONS

Sec.	
13.1.	Definitions.
13.2.	Purpose.
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13.4.	Pupil attendance.
13.5.	Experimental programs.
13.6.	Educational plans.
13.7.	Professional personnel.
13.8.	Paraprofessional personnel.
13.9.	Mainstreaming.

§13.1. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

Agency — Any intermediate unit, public school district, or private school operating approved programs and services for the education of exceptional persons.

Appropriate program — A program of education or training for exceptional school-aged persons which meets their individual needs as agreed to by a parent, school district, or intermediate unit personnel; or as ordered by a hearing officer; or upon appeal as ordered by the Secretary of Education.

Approved private school — A private school licensed by the State Board of Private Academic Schools where the specific special education program for certain exceptional handicapped persons is approved by the Secretary of Education and is thereby eligible to receive payments for tuition or tuition and maintenance from school district or Commonwealth funds.

Change in educational status — Any assignment or reassignment based on the evidence that the person is exceptional, or thought to be exceptional to one of the following educational assignments: Regular Education, Special Education, or to no assignment, or from one type of special education to another.

Exceptional persons — Persons of school-age who deviate from the average in physical, mental, emotional, or social characteristics to such an extent that they require special educational programs, facilities, or services and shall include all school-aged persons in detention homes and state schools and hospitals.

(i) *Handicapped school-aged persons* — This term shall include the following:

(A) Mentally handicapped persons who are educable mentally retarded, trainable mentally retarded, severely and profoundly mentally retarded, and socially and emotionally disturbed.

(B) Physically handicapped persons who are physically handicapped, brain damaged, learning disabled, speech or language impaired, visually handicapped, and hearing impaired.

(C) Multi-handicapped persons who have two or more severe handicaps as defined in clauses (A) and (B) of this subparagraph.

(ii) *Gifted and talented school-aged persons* — Those who, in accordance with criteria prescribed in standards developed by the Secretary of Education, have outstanding intellectual or creative ability, the development of which requires special activities or services not ordinarily provided to regular children by local educational agencies.

(iii) *Detained school-aged persons* — All persons placed in detention homes.

Mainstreaming — An educational process of maintaining or returning exceptional persons who can best profit from such placement, to the regular education classroom, with any needed supportive services being provided in accordance with the nature of the placement.

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Parent — This term shall include the term guardian and the plural of each where applicable.

Persons of school age — Those persons 6 to 21 years of age and those persons below 6 years of age who are of the age at which regular education programs are provided in their school district of residence.

Plan — The plan for special education required by section 1372 of the Public School Code of 1949 (24 P.S. § 13-1372), to insure that all exceptional persons are identified and provided education or training appropriate to their needs.

Public school programs and services for exceptional persons — Those special education programs and services conducted by an intermediate unit or school district.

Regular education — Education other than special education.

Special Education — A basic education program adjusted to meet the educational needs of exceptional persons.

Notes of Decisions

Gifted and talented students are included within this definition of exceptional persons. *Central York School District v. Department of Education*, 41 Pa. Commw. Ct. 383, 386, 399 A.2d 167, 168 (1979).

§13.2. Purpose.

(a) The general provisions of this chapter shall provide the basis for early identification and evaluation of all exceptional persons and for planning, developing, and operating special education programs and services. It shall be the policy of the Board, through the Secretary of Education to provide exceptional school-aged persons with quality special education programs and services which will ultimately enable them to participate as fully as possible in appropriate activities of daily living.

(b) Nondiscriminatory testing — all agencies shall insure that testing and evaluation materials and procedures used in classifying exceptional persons will be selected, administered, and interpreted so as not to be racially or culturally discriminatory.

(c) If the percentage of persons from any identifiable group (racial or ethnic) assigned to special education programs is significantly disproportionate to the distribution of that group in the school district or intermediate unit, the Department of Education shall so notify the school district or intermediate unit. To maintain the assignments, the intermediate unit or school district must then show evidence that the assignments are justified and the disproportion is necessary to promote a compelling education interest of the persons affected.

Notes of Decisions

In order to assure that all students who require special educational services receive appropriate training the district must adopt procedures calculated to isolate the entire population of learning disabled students and to evaluate the need of these pupils for special educational services. *Frederick L. v. Thomas*, 557 F.2d 373 at 385 (3 Cir. 1977).

§13.3. Standards.

The Secretary shall establish standards for the education or training of all exceptional persons in the Commonwealth consistent with the law and the provisions of this chapter.

§13.4. Pupil attendance.

Criteria for attendance, admission, absences, and excuses as set forth in Chapter 11 of this title (relating to pupil attendance) shall apply to all approved programs and services for exceptional persons.

§13.5. Experimental programs.

The Secretary may grant exceptions to the provisions of this chapter to meet certain unique programmatic needs of exceptional persons. Such exceptions will be evaluated annually by the Secretary and will be terminated at the Secretary's discretion.

§13.6. Educational plans.

(a) Each school district shall include in its long range plan procedures for the education of all exceptional school-aged persons.

(b) Each intermediate unit shall prepare a comprehensive plan for the education of exceptional school-aged persons which includes the district plans, the intermediate unit plan, and combination of the two plans. This plan shall include all programs and services available including welfare agencies, approved private schools, and other private schools and private agencies.

(c) The Secretary shall prescribe the format and content of the intermediate unit and school district plans.

§13.7. Professional personnel.

Professional personnel shall consist of individuals responsible for identification of exceptional persons and for provision of special education programs and services in accordance with the Public School Code of 1949 (24 P.S. §§1-101 — 27-2702) and the provisions of this chapter.

Cross References

This section cited in 22 Pa. Code §13.8 (relating to paraprofessional personnel).

§ 13.8. Paraprofessional personnel.

(a) Paraprofessional personnel shall consist of individuals under the direct supervision of the professional personnel, as described in § 13.7 of this title (relating to professional personnel).

(b) The duties and training of the paraprofessional staff shall be determined by the intermediate unit or school district.

§ 13.9. Mainstreaming.

(a) Intermediate units and school districts shall mainstream those exceptional persons who can profit by an appropriate program of education or training in a regular class.

(b) If mainstreaming is recommended, specific supportive services, including staff orientation, necessary for appropriate education and training of persons placed in the mainstream, shall be provided in accordance with the nature of the placement.

Notes of Decisions

Placement of a child at the Vanguard School was proper, since she was not attaining her intellectual potential in a public school, but her behavior had dramatically changed for the better after her placement at Vanguard. *Levy v. Department of Education*, 41 Pa. Commw. Ct. 356, 362 — 363, 399 A.2d 159, 163 (1979).

Subchapter B. EXCEPTIONAL SCHOOL-AGED PERSONS

MENTALLY AND PHYSICALLY HANDICAPPED SCHOOL-AGED PERSONS

Sec.
13.11. Program responsibility.
13.12. Placement in out-of-state institutions.
13.13. Intermediate unit or school district schools.
13.14. Approved private schools.
13.15. Course completion, diplomas, and certificates.
13.16. Curricula.

GIFTED AND TALENTED SCHOOL-AGED PERSONS

13.21. Program responsibility.
13.22. Curricula.
13.23. Cooperative programs.

MENTALLY AND PHYSICALLY HANDICAPPED SCHOOL-AGED PERSONS

§ 13.11. Program responsibility.

(a) All handicapped school-aged persons identified shall be provided with an appropriate program of education or training, or both, including the right to due process procedures as set forth in § 13.31 of this title (relating to opportunity for due process procedures) to determine the appropriateness of the classification and program.

(b) The primary responsibility for providing an appropriate program of education or training, or both, shall be that of a school district. Where such school district board cannot provide an appropriate program effectively and efficiently, it shall use the services of the intermediate unit. The services of approved private schools, state schools, and out-of-state institutions may be used, as hereinafter provided, where intermediate unit boards and school district boards agree that they cannot provide services effectively and efficiently for handicapped school-aged persons.

(c) Intermediate units and school districts shall insure that handicapped school-aged persons are provided with an opportunity for placement in appropriate vocational education programs designed to meet their unique needs.

(d) The following priority order of educational placement for handicapped school-aged persons shall be followed except where a deviation is needed to meet the appropriate needs of the person or the purpose of these regulations:

(1) A regular class in a regular school with supporting services.
(2) A school district special education program in a regular school, including homebound instruction.
(3) A school district special education program in a special facility.
(4) An intermediate unit program in a regular school.
(5) An intermediate unit program in a special facility.
(6) An approved private school program.
(7) A State school program.

(8) An approved out-of-state program, subject to the requirements of §13.12 of this title (relating to placement in out-of-state institutions).

(9) An intermediate unit program of instruction in the home.

(c) If a handicapped school-aged person has been reevaluated and is found to no longer have the exceptional characteristics that require special education programs and services, the intermediate unit or school district shall prepare an appropriate program for the person to return to the regular school. If at the end of one year the individual demonstrates that the regular program is now appropriate, all records and materials identifying the person as exceptional shall be placed in a confidential file and shall be released only upon permission of the parent or guardian.

Cross References

This section cited in 22 Pa. Code §21.31 (relating to educational specifications); 22 Pa. Code §341.33 (relating to content of plans); and 22 Pa. Code §341.35 (relating to approval of plans).

Notes of Decisions

Learning disabled students are required to be identified in order to evaluate the need for special educational services. *Frederick L. v. Thomas*, 557 F.2d 373 at 377 (3 Cir. 1977).

Placement of a child at the Vanguard School was proper, since she was not attaining her intellectual potential in a public school, but her behavior had dramatically changed for the better after her placement at Vanguard. *Levy v. Department of Education*, 41 Pa. Commw. Ct. 356, 362 — 363, 399 A.2d 159, 163 (1979).

There is no duty to use private schools in programs for handicapped school-aged persons. *Summit School, Inc. v. Department of Education*, 43 Pa. Commw. Ct. 623, 628, 402 A.2d 1142, 1145 (1979).

Since the parents of a deaf child did not establish that a vocational education was preferable to an academic education for their child and did not establish that the district or intermediate unit could not provide such vocational education, placement of the child in the Pennsylvania School for the Deaf was not justified. *Fitz v. Intermediate Unit #29*, Pa. Commw. Ct. 370, 374 — 375, 403 A.2d 138, 140 — 141 (1979).

There is nothing which requires a "more appropriate" program when an appropriate educational program exists in the intermediate unit. *Krawitz v. Department of Education*, 48 Pa. Commw. Ct. 155, 160 — 161, 408 A.2d 1202, 1205 (1979).

§13.12. Placement in out-of-state institutions.

(a) The Secretary shall approve the placement of certain multihandicapped school-aged persons in approved out-of-state institutions provided the following conditions are met:

(1) There is no appropriate program for placement of such multi-handicapped school-aged persons in the school districts, intermediate units, approved private schools in the Commonwealth, or state schools.

(2) The parent, school district superintendent, and intermediate unit executive director agree that there is no appropriate placement in the Commonwealth.

(3) There is concurrence by the Secretary of Education with the decision of the school district superintendent and intermediate unit executive director.

(b) If an appropriate placement for such person has been identified within the Commonwealth, the Secretary of Education may initiate action for the return of such person, and the person shall be returned to an approved program within the Commonwealth.

Cross References

This section cited in 22 Pa. Code § 13.11 (relating to program responsibility).

Notes of Decisions

Since the parents of a socially and emotionally disturbed child would not agree to placement other than in a specific out-of-state school and would not make their child available so that it could be determined whether there was an appropriate in-state program, the Secretary of Education may not be compelled to approve the out-of-state placement and tuition reimbursement by the Commonwealth. *Welsch v. Department of Education*, 42 Pa. Commw. Ct. 41, 44, 400 A.2d 234, 235 (1979).

Regardless of whether a child was or was not multihandicapped, the Department was liable for out-of-state tuition reimbursement since the parents had tried to obtain a Department ruling on the matter but were unable to get such a ruling until 14 months later. *Krawitz v. Department of Education*, 48 Pa. Commw. Ct. 155, 158 — 159, 408 A.2d 1202, 1204 (1979).

§13.13. Intermediate unit or school district schools.

(a) Special schools devoted exclusively to the education of handicapped school-aged persons may be established by the intermediate units or school districts upon approval by the secretary.

(b) Approval for such schools shall only be granted after the school district or intermediate unit submits written documentation that there is no appropriate existing or projected regular or special classroom space available in the area.

(c) Special schools shall be separate facilities which have been designed to meet the instructional needs of handicapped school-aged persons. To receive

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approval, such facilities shall meet the following requirements:

(1) Conform to regulations on school buildings as set forth in Chapter 21 of this title (relating to school buildings).

(2) Be located in close proximity to a school where regular class programs are available to permit as much integration and participation in regular programs as is feasible and desirable.

(3) Include special construction devices and equipment essential to provide an improved learning environment in relation to the nature and degree of physical or mental condition.

(4) Adhere to a plan for special education which enhances the possibility of providing a high quality of special education programs and services.

(5) Receive approval of the Secretary that such a facility is consistent with an approved plan and only where integrated facilities are not feasible.

§13.14. Approved private schools.

(a) Approved private schools shall be recognized as a resource to the state school system in providing for certain handicapped school-aged persons.

(b) Approved private schools shall meet the following standards:

(1) Licensed or accredited by the appropriate state board or state recognized accrediting agency.

(2) Approved in accordance with such standards and procedures as necessary to insure compliance with law and these regulations.

(3) Reapproved at least every three years by the Secretary of Education.

(c) The Department shall furnish annually to each intermediate unit a listing of all approved private schools and the types of programs approved for each. Intermediate unit planning shall include provisions for use of approved private schools where appropriate to provide especially for multi-handicapped school-aged persons. Nothing in these regulations shall restrict the use of approved private schools to serving multi-handicapped, school-aged persons solely.

(d) The Secretary may approve, as necessary, certain private schools to provide an appropriate educational program for persons in those areas of the state where such programs cannot be provided by the school district, intermediate unit, or other state agency.

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Notes of Decisions

There is no duty to approve private schools, and the limitation "as necessary" which appears in 22 Pa. Code § 13.14(d) (relating to approved private schools) indicates an intention that the Department need not act so long as it uses other alternatives in providing education for exceptional students. *Summit School, Inc. v. Department of Education*, 43 Pa Commw. Ct. 623, 630, 402 A.2d 1142, 1146 (1979).

§13.15. Course completion, diplomas, and certificates.

(a) *Course completion*. Satisfactory completion of special education courses for exceptional school-aged persons shall be determined by the special education teacher in consultation with the principal of the school, and the Supervisor of Special Education.

(b) *High school diploma*. Each exceptional school-aged person, except as set forth in subsection (c) of this section, satisfactorily completing special education programs at the high school level, shall be granted and issued a regular high school diploma by the district of residence in accordance with standards established by the Secretary of Education.

(c) *Certificate*. Trainable and profoundly mentally retarded persons satisfactorily completing an approved special education program for the trainable shall be issued a certificate in accordance with standards established by the Secretary.

§13.16. Curricula.

(a) Curricula for mentally or physically handicapped school-aged persons shall be conducted in accordance with standards established by the Secretary of Education and shall include provisions for the following:

(1) Admission, continuance, enrollment, and pupil qualifications or eligibility, determined by the type and degree of mental or physical handicap.

(2) Facilities and materials, supplies and special equipment, determined by the type of mental or physical handicap.

(3) Amount of supervision and special teaching determined by the type and degree of mental or physical handicap.

(b) Curricula determined by type and degree of mental or physical handicap shall provide for an orderly sequence of instruction to permit the development of learning skills compatible with age and ability levels of exceptional persons.

GIFTED AND TALENTED SCHOOL-AGED PERSONS

§13.21. Program responsibility.

Effective July 1, 1976, the provisions of Subchapter C of this chapter (relating to due process procedures) for exceptional or thought to be exceptional

school-aged persons shall be applicable to all gifted and talented school-aged persons provided that if the school district or intermediate unit does not have the particular program as recommended by the hearing officer, full implementation of the decision of the hearing officer may be stayed until the beginning of the 1977-78 school year.

Source

The provisions of this § 13.21 amended June 25, 1976, 6 Pa.B. 1491. Immediately preceding text appears at serial page (21499).

§13.22. Curricula.

Curricula for gifted and talented school-aged persons shall be conducted in accordance with standards established by the Secretary and shall include provisions for the following:

(1) Admission, continuance, enrollment, and pupil qualifications or eligibility, determined by the type and degree of extraordinary mental abilities or talents.

(2) Facilities and materials, supplies and special equipment, determined by the type and degree of extraordinary mental abilities or talents.

(3) Amount of supervision and special teaching, determined by the type and degree of mental abilities or talents.

§13.23. Cooperative programs.

School Districts may join in with other districts, intermediate units, or the Department in a cooperative arrangement to provide programs for gifted and talented school-aged persons.

Subchapter C. DUE PROCESS PROCEDURES

Sec.
13.31. Opportunity for due process procedures.
13.32. School District initiated due process procedures.
13.33. Parent initiated due process procedures.

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Cross References

This subchapter cited in 22 Pa. Code §13.21 (relating to program responsibility).

§13.31. Opportunity for due process procedures.

(a) The due process procedures as stated in this section shall be applicable to all exceptional or thought to be exceptional school-aged persons.

(b) The parent of any school-aged person shall, upon presentation to the school district of written evidence that their child is an exceptional or thought to be exceptional person, and receiving less than an appropriate program of education or training, have the right to request due process procedures.

(c) The educational assignment of every exceptional or thought to be exceptional person must be evaluated not less than every two years, or annually upon the request of the parents, and upon such re-evaluation, notice and opportunity to request due process procedures shall be provided.

(d) No exceptional or thought to be exceptional school-aged person shall be subjected to a change in educational status unless the district first informs that person and his parent about the opportunity for due process procedures.

(e) The provisions of this section shall also apply to any exceptional or thought to be exceptional school-aged person who has never had an educational assignment.

(f) Due process procedures shall adhere to the following course of events:

(1) *Program placement conference.* A parent conference shall be held for the purpose of a detailed explanation of a contemplated change in education or major modification of the program of any exceptional or thought to be exceptional school-aged person.

(2) *Formal due process hearing.* Upon request of the parent, a due process hearing shall be held before a hearing officer who shall render a decision.

Cross References

This section cited in 22 Pa. Code § 13.11 (relating to program responsibility); 22 Pa. Code § 13.21 (relating to program responsibility); and 22 Pa. Code §341.91 (relating to disciplinary exclusions of certain handicapped students from special education placement).

Notes of Decisions

22 Pa. Code § 13.31(b) (relating to opportunity for due process procedures) together with 22 Pa. Code §§ 13.32(24) (relating to school district initiated due process procedures) and 13.33(7) (relating to parent-initiated due process procedures), confers standing on parents to litigate matters involving a school district's obligation to provide their child with an education, even though the child is temporarily committed to the custody of an institution. *O'Grady v. Centennial School District*, 43 Pa. Commw. Ct. 287, 291, 401 A.2d 1388, 1390 (1979).

There is nothing in the language of 22 Pa. Code § 13.31(c) which limits the authority of the Secretary such that the Secretary may not delay the date of a child's transfer to an intermediate unit until the start of the following school year. *Savka v. Department of Education*, 44 Pa. Commw. Ct. 62, 67, 403 A.2d 142, 145 (1979).

§13.32. School District initiated due process procedures.

The following procedures shall be completed when the school district initiates the due process procedure:

(1) When any exceptional or thought to be exceptional school-aged person is recommended for a change in educational status by a school district, intermediate unit, or any school official, notice of the proposed action shall first be given to the person and the parent. If the parent desires, the parent may, in writing, indicate satisfaction with the recommendation and waive the parent conference.

(i) The notice shall inform the parent or guardian of the availability of various organizations, including the local chapter of the Pennsylvania Association for Retarded Citizens, to assist in connection with the hearing, and the school district or intermediate unit involved shall provide the address and telephone number of such local organization in the notice.

(ii) The notice need contain only the address and telephone number of those additional organizations which register with the school district or its intermediate unit as being available to persons in that geographic area and indicate the type or classification of children on whose behalf they will render assistance. This information may be on a separate sheet attached to the notice.

(iii) The notice shall inform the parent or guardian that his child, if mentally disabled, mentally retarded, or emotionally disturbed is entitled, under the Mental Health and Mental Retardation Act of 1966 (50 P.S. §§4101 — 4704) and the Mental Health Procedures Act (50 P.S. §§7101 — 7503), to the services of a local MH-MR center for an independent medical, psychological, and educational evaluation. The notice shall specify the name, address, and telephone number of the MH-MR center in the catchment area of the parent or guardian.

(2) The notice shall inform the parent of the right to a placement conference with the school entity involved and of the right to a full hearing before the Secretary or the designee of the Secretary on the proposed action, and shall also include the information set forth in paragraphs (9), (10), (15),

(16), (17), (18), and (19) of this section.

(3) A program placement conference shall be initiated either at the request of the school or the request of the parent within ten days of the receipt of the notice.

(4) The parent may request complete evaluation by the school district or intermediate unit which shall be completed by the school district or intermediate unit prior to the program placement conference.

(5) Prior to such conference the parents shall receive by certified mail, addressee only, return receipt requested, all information pertaining to the conference including but not limited to documentation of the reasons for the change in educational status, such as, test used, results, and the like, what change in educational status is being recommended and other alternatives that are available for the individual and why these alternatives were not recommended.

(6) If the parents do not agree with the school evaluation, they may have an outside evaluation done at their own expense prior to the program placement conference.

(7) The Chief School Administrator or his designee shall chair the conference. The conference shall include but not be limited to the guidance counselor, the evaluator to explain the tests and procedures, the person when appropriate, the parent, and the evaluator who conducted the testing for the parent.

(8) At the conference every effort shall be made to reach an amicable agreement keeping in mind the best interests of the individuals and in no way shall the conference take the place of the due process hearings provided by this subchapter.

(9) If the conference does not result in an agreement as to assignment, the parent may request a due process hearing. When the parent indicates satisfaction with the placement at the conference the parent may, within five days of the conference in writing, change this decision and request that a hearing be held. At the conference, the parent shall receive from the school district a form which is to be used for this purpose. There shall be no change of educational assignment during the five days.

(10) If a due process hearing is called for, it shall be scheduled not sooner than 15 days nor later than 30 days after receipt of the request in the Department provided, however, that upon showing good cause, a reasonable extension of these times shall be granted at the request of the parent. The school entity must forward the request for a hearing to the Department within ten days of the receipt of a request of a parent.

(11) The hearing shall be held in the school district and at a place reasonably convenient to the parent of the person. At the option of the parent, the hearing may be held in the evening, and such options shall be set forth in the form requesting the hearing.

(12) The hearing officer shall be assigned by the Secretary or a designee, but shall not be an officer, employe, or agent of any school district or intermediate unit in which the person resides.

(13) The hearing shall be an oral, personal hearing, and shall be public unless the parent specifies a closed hearing. If the parent requests an open hearing, the decision rendered in the case, and only the decision, will be available to the public.

(14) The decision of the hearing officer shall be based solely upon the evidence presented at the hearing.

(15) The proposed change in educational status or modification for appropriateness shall be approved only if supported by substantial evidence on the whole record of the hearing. Introduction by the school district or intermediate unit of the official report recommending a change in educational assignment, provided a copy of such report was given to the parent at the time notice was given, shall discharge its burden of going forward with the evidence, thereby requiring the parent to introduce evidence as contemplated in paragraphs (17), (18), and (19) of this section in support of the contention of the parent.

(16) A record of the hearing shall be made and shall be available to the parent or the representative of the parent. The record may be discarded after five years.

(17) The parent of the person may be represented at the hearing by any person chosen by the parent, including legal counsel.

(18) The parent or the representative of the parent shall be given reasonable access prior to the hearing to all records of the intermediate unit or school district concerning the person, including any tests or report upon which the proposed action may be based. "Reasonable access" shall be in accordance with the guidelines for the collection, maintenance, and dissemination of pupil records under §12.33 of this title (relating to guidelines) and shall include the right of the parent to receive copies of the records of the child. The school district may charge a reasonable fee to cover the cost of such copies, provided that the fee does not effectively prevent the parents from exercising their right to have reasonable access to those records.

(19) The parent or the representative of the parent shall have the right to compel the attendance of and to question any witness testifying for the intermediate unit board and the school district board and any official, employe, or agent of the intermediate unit, school district, or the Department who may have evidence upon which the proposed action may be based.

(20) The parent shall have the right to present evidence and testimony, including expert medical, psychological, or educational testimony.

(21) No later than 20 days after the hearing, the hearing officer shall render a decision in writing which shall be accompanied by written findings of fact and conclusions of law and which shall be sent by certified mail, return receipt requested, to the parent and the representative of the parent.

(22) There shall be no change in the educational status of the person without prior notice and the opportunity to be heard as set forth in this subchapter, except that in extraordinary circumstances the Department, upon written request by the school district or intermediate unit setting forth the reasons therefore and upon notice to the parent, may approve an interim change in educational assignment prior to the hearing, in which event the hearing will be held as promptly as possible after the interim change. The Department will act upon any such request promptly, and in any event, within three days of its receipt.

(23) Any time limitation contained in this subchapter shall be construed

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and applied so as to do substantial justice and may be varied upon request and good cause shown.

(24) The decision of a hearing officer may be appealed to the Secretary.

Source

The provisions of this §13.32 amended December 16, 1977, 7 Pa.B. 3783. Immediately preceding text appears at serial page (30479).

Cross References

This section cited in 22 Pa. Code §13.33 (relating to parent initiated due process); 22 Pa. Code §13.62 (relating to right to education); 22 Pa. Code §341.11 (relating to parent-initiated identification); 22 Pa. Code §341.12 (relating to school district identification); 22 Pa. Code §341.13 (relating to evaluation); 22 Pa. Code §341.16 (relating to Individualized Education Program Conference); 22 Pa. Code §341.18 (relating to relation to hearing); and 22 Pa. Code §341.91 (relating to disciplinary exclusions of certain handicapped students from special education placement).

Notes of Decisions

22 Pa. Code §13.31(b) (relating to opportunity for due process procedures) together with § 13.32(24) (relating to school district initiated due process procedures) and § 13.33(7) (relating to parent-initiated due process procedures), confers standing on parents to litigate matters involving a school district's obligation to provide their child with an education, even though the child is temporarily committed to the custody of an institution. *O'Grady v. Centennial School District*, 43 Pa. Commw. Ct. 287, 291, 401 A.2d 1388, 1390 (1979).

Since the parent did not request the intermediate unit to perform an evaluation of the child under 22 Pa. Code § 13.32(4) (relating to school district initiated due process procedures) and since the current school of the child had supplied evaluation records, the intermediate unit was not obligated to perform another evaluation. *Savka v. Department of Education*, 44 Pa. Commw. Ct. 62, 66, 403 A.2d 142, 144 (1979).

§13.33. Parent-initiated due process procedures.

The following procedures shall be completed when the parent initiates the due process procedures:

(1) Any parent who believes their school-aged person is any of the following:

(i) Appropriately classified as an exceptional person.

(ii) An exceptional person classified as nonexceptional.

(iii) A nonexceptional person classified as exceptional.

(iv) Receiving less than an appropriate program of education and training, or both. The parent may forward to the school district written evidence which supports the contentions of the parent.

(2) Upon receipt of the documents required by paragraph (1) of this section, the school district superintendent shall initiate, within ten days, a program placement conference.

(3) The Chief School Administrator or his designee shall chair the program placement conference. The conference shall include but not be limited to the guidance counselor, the evaluator to explain the tests and procedures, the person when appropriate, the parent, and the evaluator who conducted the testing.

(4) At the conference every effort shall be made to reach an amicable agreement keeping in mind the best interests of the individuals, and in no way shall the parent conference take the place of the due process hearings provided by this subchapter.

(5) The school district shall prepare written evidence supporting the appropriateness of the classification of the person and the program in which the person is currently enrolled and shall make this available to the parent or the representative of the parent.

(6) Upon conclusion of the conference the parent may, if unsatisfied with the explanation of the school district, request a due process hearing.

(7) The due process hearing, if requested, will follow steps and procedures specified in §§13.32 (9) — (24) of this title (relating to school district initiated due process).

Cross References

This section cited in 22 Pa. Code §341.18 (relating to hearing).

Notes of Decisions

22 Pa. Code §13.31(b) (relating to opportunity for due process procedures) together with § 13.33(7) (relating to parent-initiated due process procedures) and § 13.32(24) (relating to school district initiated due process procedures), confers standing on parents to litigate matters involving a school district's obligation to provide their child with an education, even though the child is temporarily committed to the custody of an institution. *O'Grady v. Centennial School District*, 43 Pa. Commw. Ct. 287, 291, 401 A.2d 1388, 1390 (1979).

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Subchapter D. DUE PROCESS HEARINGS

Sec.

13.61. [Reserved].
13.62. Right to education.

§13.61. [Reserved].

§13.62. Right to education.

Pursuant to the order issued in Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa., 1971), the Secretary, the Board, the school districts, and the intermediate units shall cease and desist from applying sections 1304, 1318, 1326, 1330(2), 1371(1), 1372(3), 1375, and 1376 of the Public School Code of 1949 (24 P.S. §§ 13-1304, 13-1318, 13-1326, 13-1330(2), 13-1371(1), 13-1372(3), 13-1375, and 13-1376), except as follows:

(1) Section 1304 (24 P.S. § 13-1304) means only that a school district may refuse to accept into or retain in the lowest grade of the regular primary school or the lowest regular primary class above the kindergarten level, any child who has attained the mental age of five years. Any child whose admission to regular primary school or to the lowest regular primary class above kindergarten is postponed, or who is not retained in such school or class, is entitled to immediate placement in a free public program of education and training pursuant to sections 1371 — 1382 (24 P.S. §§ 13-1371 — 13-1382), which provide alternative programs of education and training for exceptional children.

(2) Section 1318 (24 P.S. § 13-1318) means that the suspension of a mentally retarded child under the same circumstances as a typical child might amount to punishment for a ramification of the very disability which a public school program of education is attempting to remedy. To avoid such a result, it shall first be concluded that a suspension or expulsion pursuant to section 1318 (24 P.S. § 13-1318) is a change in educational assignment which would, except as provided in this section, require notice and a due process hearing.

(3) Acknowledging, however, that a disciplinary problem with a mentally retarded child may be so immediate or severe as to require summary action, the parties in Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa., 1971) agreed to Amended Stipulation 3(V). Thus, in those cases which warrant immediate action, and after the approval of the State Director of Special Education an interim change in the educational assignment of a mentally retarded child in the form of suspension, expulsion, or other placement, may be made

so long as there is a due process hearing as promptly as possible after that interim change.

(4) Section 1326 (24 P.S. § 13-1326) means only that the parents of a child have a compulsory duty while the child is between 8 and 17 years of age, to assure the attendance of such child in a free public program of education and training. Furthermore, if a parent does not discharge the duty of compulsory attendance with regard to any mentally retarded child between 8 and 17 years of age, then the department will take those steps necessary to compel the attendance of the child pursuant to section 1327 (24 P.S. §13-1327) and any compulsory attendance regulations.

(5) However, section 1326 (24 P.S. § 13-1326) does not limit the ages between which a child must be granted access to such a program. Section 1301 of the Public School Code of 1949 (24 P.S. § 13-1301) requires that the Commonwealth provide a free public education to all children 6 to 21 years of age. Thus, no school district or intermediate unit may deny access to a free program of public education to any mentally retarded child age 6 to 21 years whose parents elect to enroll that child in such a program.

(6) Section 1330(2) (24 P.S. § 13-1330(2)) means only that when a parent elects to voluntarily withdraw a child from public school attendance, that parent may be excused from liability under the compulsory attendance provision of section 1326 (24 P.S. § 13-1326) when that parent acquires the following:

(i) The approval of the local school board.

(ii) The approval of the Secretary.

(iii) A finding by an approved clinic or public school psychologist or psychological examiner that the child is unable to profit from further public school attendance.

(7) Section 1371(1) (24 P.S. §13-1371(1)) means children aged 6 to 21. This phrase also means all mentally retarded children who have reached the age less than six at which regular pre-school programs are made available to other children either by the Department through any of its instrumentalities, such as local school districts or intermediate units, or by the Department of Public Welfare through any of its instrumentalities. This construction should insure that preschool programs are equally available in this Commonwealth to mentally retarded and typical children less than six years of age.

(8) Section 1372(3) (24 P.S. § 13-1372(3)) means that homebound instruction is one of the options available to a school district where placement in a regular public school class is not possible. For a given mentally retarded child, homebound instruction may be the only appropriate method for providing the free public program of education and training to which that child is entitled, even though this is the least preferable type of educational program. Such instruction shall involve education and training for at least five

hours a week. Pupils assigned to homebound instruction shall be reevaluated not less than every three months with notice and opportunity for a hearing as set forth in §13.32 of this title (relating to school district initiated due process procedures).

(9) Section 1375 (24 P.S. § 13-1375) means that insofar as the Department of Public Welfare will "arrange for the care, training, and supervision" of a child certified to it, the Department of Public Welfare will provide a program of education and training appropriate to the individual capacities of that child. This section further means that when it is found, on the recommendation of a public school psychologist and upon the approval of the local board of school directors and the Secretary, as reviewed in the due process hearing contemplated by the Court's Order of June 18, 1971, that a mentally retarded child would benefit more from placement in a program of education and training administered by the Department, the child should be certified to the Department of Public Welfare for the timely placement in a program of education and training.

(10) Section 1376 (24 P.S. § 13-1376) means the term "brain damage" as used in this section and as further defined in the board's "Criteria for Approval of Reimbursement" includes thereunder all mentally retarded persons. Accordingly, there should now be available to them tuition for day school and tuition maintenance for residential school up to the maximum sum available for day school or residential school, whichever provides the program of education and training more appropriate to the learning capacities of the mentally retarded child.

Notes of Decisions

The provisions of 22 Pa. Code §13.62(10) apply only to mentally retarded children and do not apply to learning disabled and emotionally disturbed children. *Krawitz v. Department of Education*, 48 Pa. Commw. Ct. 155, 160, 408 A.2d 1202, 1205 (1979).

CHAPTER 15. SCHOOL DISTRICT ORGANIZATION

[Reserved]

ORGANIZATION AND FUNCTION

341.51. Organization.
341.52. [Reserved].
341.53. Grouping.
341.54. [Reserved].
341.55. Curricula.
341.56. [Reserved].
341.57. Personnel.
341.58. Instructional materials, equipment, and supplies.
341.59. Facilities.

BUDGET

341.71. Special education budgets.

EXCLUSION

341.91. Disciplinary exclusions of certain handicapped students from special education placement.

Authority

The provisions of this Chapter 341 issued under act of March 10, 1949 (P.L. 30, No. 14) (24 P.S. §§13-1371 — 13-1394), unless otherwise noted.

Source

The provisions of this Chapter 341 adopted September 30, 1977, 7 Pa.B 2792, unless otherwise noted.

PRELIMINARY PROVISIONS

§341.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

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Change in educational status — Any assignment or reassignment based on evidence that the person is exceptional or thought to be exceptional. The following educational assignments are included: regular education, special education, no assignment, or a change from one type of special education to another. Any change shall be in accordance with an Individualized Education Program.

Department — The Department of Education of the Commonwealth.

Exceptional persons — Those persons evaluated in accordance with this chapter as being hearing impaired, mentally gifted and talented, mentally retarded, physically handicapped, learning disabled, brain damaged, speech and language impaired, socially and emotionally disturbed, visually impaired, or severely multihandicapped. These terms are further defined as follows:

(i) *Brain damage* — A moderate to severe injury to the brain, as identified by a neurological examination, resulting in severe behavior and learning disorders. Persons whose behavior and learning disorders are primarily the result of visual, hearing, or motor handicaps, mental retardation, emotional factors, or environmental disadvantage are not brain injured. The term brain damage does not include the condition known as minimal brain disfunction.

(ii) *Hearing impaired* — A hearing loss ranging from mild, that is, hard of hearing, to profound, that is, deaf, which interferes with the development of the communication process and results in failure to achieve full educational potential. A person shall be assigned to a program for the hearing impaired when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided, that the evaluation includes a report by an audiologist and otologist.

(iii) *Learning disability* — A deficiency in the acquisition of basic learning skills, including but not limited to the ability to reason, think, read, write, spell, or do mathematical calculations, as identified by an educational and psychological evaluation. Persons who have learning disorders which are primarily the result of visual, hearing, or other handicaps, mental retardation, emotional factors, or environmental disadvantage are not learning disabled. The term learning disability does not exclude the possibility that a learning disabled person may also exhibit such conditions as brain damage or minimal brain disfunction. A person shall be assigned to a program for the learning disabled when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided that the evaluation clearly indicates that the person can demonstrate average or above average intellectual functioning on an appropriate intelligence measure. The evaluation shall include an assessment of specific academic strengths and weaknesses.

(iv) *Mentally gifted* — Outstanding intellectual and creative ability the development of which requires special activities or services not ordinarily provided in the regular program. Persons shall be assigned to a program for the gifted when they have an IQ of 130 or higher. A limited number of persons with IQ scores lower than 130 may be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability.

(v) *Mentally retarded* — Impaired mental development which adversely affects the educational performance of a person. A mentally retarded person exhibits significantly impaired adaptive behavior in learning, maturation, or social adjustment as a result of subaverage intellectual functioning. The degree of retardation and the level of social and academic functioning, not deviant behavior patterns, shall be the factors in determining the individualized program. A person shall be assigned to a program for the mentally retarded when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided that no person shall be assigned to a program for the:

(A) educable mentally retarded unless the IQ score of that person is lower than 80;

(B) trainable mentally retarded unless the IQ score of that person is lower than 55; or

(C) severely and profoundly mentally retarded unless the adaptive behavior of that person is so severely impaired that education programming is oriented to behaviors which may be considered absolutely basic to higher levels of skilled performance; individuals with an IQ score lower than 30 may be considered for these programs and shall be evaluated by a physician prior to assignment.

(vi) *Physically handicapped* — Orthopedic or other health impairments of sufficient magnitude to limit the classroom accommodation and educational performance of a person. A person shall be assigned to a program for the physically handicapped when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided that the evaluation includes reports from a physician and a certified public school psychologist.

(vii) *Severely multihandicapped* — Persons who are diagnosed as having two or more of the following severe handicapping conditions required for assignment to approved private schools under §171.23 of this title (relating to application for approved private school status):

(A) *Blind* — A visual handicap of a severe degree. Those persons in whom there is visual acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees.

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(B) *Brain damage* — Those persons who manifest severe behavior and learning disorders resulting from a severe insult to the brain as identified by a neurological examination.

(C) *Cerebral palsy* — Those persons with severe bilateral, symmetrical, nonprogressive paralysis resulting from developmental defects in the brain or trauma at birth who cannot carry on independently the normal activities of daily living.

(D) *Deaf* — A hearing handicap of a severe degree. Those persons in whom the sense of hearing is nonfunctional for the ordinary purposes of life. This includes the congenitally and adventitiously deaf. The following represents hearing loss as defined by audiometer measurements: severe hearing loss — 60 db to 90 db and deaf — 90 db or more in both ears.

(E) *Emotional disturbance* — Those persons who manifest a severe major affective psychosis which is characterized by a single disorder of mood, either extreme elation or depression, that dominates the mental life of the person and is responsible for whatever loss of contact they may have with their environment.

(F) *Muscular dystrophy* — Those persons who manifest a severe wasting away and atrophy of the muscles whereby they become nonambulatory, lose muscle power, and are unable to participate in normal activities of daily living.

(G) *Severely mentally retarded* — Those persons whose adaptive behavior is so severely impaired that educational programming is directed to behaviors that require closely supervised simple self-help and very simple work skills requiring full dependence upon others. This term is used to describe the degree of mental retardation present when intelligence testing is lower than an IQ of 25 as measured on individual psychological tests with no consideration of the standard error of measurement permitted. Those with such adaptive behavior and measured mental ability shall be considered for these programs and shall be evaluated by a physician prior to assignment.

(viii) *Socially and emotionally disturbed* — A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. A person shall be assigned to a program for the socially and emotionally disturbed when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided that the evaluation includes reports from a board-certified or approved psychiatrist. No person shall be assigned to a program for the socially and emotionally disturbed for disciplinary reasons alone. Socially and emotionally disturbed children shall be psychiatrically reevaluated every two years.

(ix) *Speech and Language Impaired* —Communication disorders of impaired language, voice, fluency, or articulation to such a degree that academic achievement is invariably affected and that the condition is significantly handicapping to the affected person. A person shall be assigned to a program for the speech and language impaired when the screening by a speech clinician and the Individualized Education Program indicate that such a program is appropriate. Where appropriate, an evaluation by a certified public school psychologist or physician shall be performed.

(x) *Talented* —Outstanding talent as identified by a team of educators and professionals competent in the areas of art, music, dance, photographic arts, or theater, the development of which requires special activities or services not ordinarily provided in the regular program. A person identified as talented shall be eligible to attend the Governor's School for the Arts.

(xi) *Visually impaired* —A visual impairment which adversely affects the educational performance of the person. A person shall be assigned to a program for the visually impaired when the evaluation and Individualized Education Program indicate that such a program is appropriate; provided that the evaluation includes an examination by an eye specialist and a written report of the nature and degree of the visual impairment.

IQ score —An IQ score with consideration for a plus or minus five standard error of measurement as measured by an individual psychological test.

Notice —Written notice in the language or mode of communication normally used by the person to whom the notice is being given.

Parent —A parent or guardian, or an individual acting as a surrogate parent in the absence of a parent or guardian of any person of school age.

School-aged person —Persons aged six to 21 and persons younger than six who are of the age at which regular education programs are provided in their school district of residence.

Special education —A basic education program planned to meet the educational needs of exceptional persons.

Surrogate parent —A person appointed by the intermediate unit to act as the parent of a school-aged person when the parents are not known or unavailable or when the school-aged person is a ward of the State. The person appointed shall not be an employe of the State or local education agency involved in the education or care of the school-aged person.

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Cross References

This section cited in 22 Pa. Code §341.13 (relating to evaluation); and 22 Pa. Code §341.35 (relating to approval of plans)

PLACEMENT

§341.11. Parent-initiated identification.

(a) *General rule.* Any parent who believes that his child is exceptional and is not receiving appropriate special education programming may request, in writing, an evaluation of the child.

(b) *Conference.* A conference shall be scheduled within ten days of receipt of the written request. The conference shall include, but shall not be limited to, the parent, the teacher of the person, and a supervisor of special education or principal. Any person the parent wishes to invite may attend. Prior to the conference, the school district shall prepare written evidence supporting the appropriateness of the present program of the person or a recommendation for a change in assignment provided that no such recommendation is made until after an evaluation of the person has been performed in accordance with this chapter. At the conference, every effort shall be made to reach an amicable agreement, keeping in mind the best interest of the individual. If a change in assignment is recommended, an Individualized Education Program shall be developed at the conference.

(c) *Hearing.* Upon conclusion of the conference, the parent, if dissatisfied with the results of the conference, may request a hearing. The hearing procedures shall be in accordance with §13.32(8)-(23) of this title (relating to school district initiated due process procedures).

§341.12. School district identification.

(a) *Policy.* Each school district shall adopt a policy for the identification of school-aged persons who may be in need of special education programs or services.

(b) *Coordination.* The policy shall be coordinated with the intermediate unit.

(c) *Group screening.* The policy shall refer to those group screening instruments which may be used as the basis for referral for evaluation. A group screening instrument is a basic test administered to or a procedure used with all children in a school, for example, achievement tests administered to all students in a school or to all students of a certain grade level, speech and language screening instruments, and visual and hearing tests administered in accordance with Article 14 of the Public School Code of 1949 (24 P.S. §§1401-14-1422).

(d) *Referrals.* The policy shall include a system by which persons who may be in need of special education are referred by parents, teachers, school nurses, and other professional employes for evaluation. At the same time, the parent shall be informed in accordance with subsection (e) of this section that the person has been referred for evaluation.

(e) *Notice to parents.* The parents of any person referred for evaluation shall be informed in writing:

(1) that the person has been referred for evaluation:

(2) of the basis upon which the referral was made;

(3) that the parent has the right to inspect and review all relevant school records;

(4) of the procedures and specific types of tests which will be used in the evaluation and the approximate dates of such procedures;

(5) of the right of the parents to meet with a public school psychologist to discuss the referral and proposed evaluation procedures;

(6) of the right of the parents to object to the evaluation and request a hearing in accordance with §13.32 of this title (relating to school district initiated due process procedure); and

(7) of the right of the parents to give or withhold their consent to the evaluation.

(f) *Conference.* The notice required by subsection (e) of this section may be given to the parents at a conference.

Cross References

This section cited in 22 Pa. Code §341.13 (relating to evaluation); and 22 Pa. Code §341.33 (relating to content of plans).

§341.13. Evaluation.

(a) *General rule.* An evaluation must be conducted in accordance with this section prior to the assignment of any person to a special education program or service or prior to the denial of assignment if the parent requests assignment. A person may, however, be assigned to itinerant speech and language service in accordance with subsection (g)(2) of this section after identification in accordance with §341.12(c) of this title (relating to school district identification). In each instance, except for speech and language impaired, an individual psychological examination shall be administered by a certified public school psychologist prior to assignment to a special education program. For speech and language impaired, a psychological evaluation may be administered by a certified public school psychologist.

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(b) *Individualized Education Program.* An evaluation requires the analysis and investigation necessary to develop an Individualized Education Program appropriate for the person as required by §341.15 of this title (relating to Individualized Education Program). There shall be no change in educational status until the Individualized Education Program has been developed.

(c) *Scope.* The nature of the individual behavioral and learning characteristics of the person thought to be exceptional shall determine the psychological, educational, and other assessment services to be used in the evaluation and the uniqueness in procedures or protocols which may be used; provided that persons thought to have a specific exceptionality shall be evaluated in accordance with the minimum requirements for that exceptionality as provided in §341.1 of this title (relating to definitions).

(d) *Tests.* Tests and similar evaluation materials shall be:

(1) administered in the native language or mode of communication of the child, unless it is clearly not feasible to do so;

(2) selected and administered so that the test results accurately reflect the aptitude of the person, achievement level, or whatever other factor the test purports to measure rather than the impaired sensory, manual, or speaking skills of the person, except where such skills are the factors which the test purports to measure;

(3) professionally validated for the specific purpose for which they are to be used;

(4) administered by certified professional employes in accordance with the instructions provided by the producer of the test and sound professional practice; and

(5) selected and administered to assess specific areas of educational need and not merely a single general intelligence quotient.

(e) *Other information.* Information from sources other than ability or achievement tests, including information from the parents concerning the physical condition, sociocultural background, and adaptive behavior in home and school of the person, shall be considered in recommending assignments. No one test or type of test shall be used as the sole criterion for development of the Individualized Education Program.

(f) *Outside evaluation.* Reports and evaluations submitted by the person or parent shall be given full consideration by the school district in recommending assignments. No one test or type of test shall be used as the sole criterion for development of the Individualized Education Program.

(g) *Team.* All data collected under this section and the relevant school record of the person shall be reviewed and interpreted by a public school psychologist, the present teacher of the person, and a supervisor of special education or a school administrator of another person knowledgeable about the program and service options which may be appropriate for the person.

(1) If the review and interpretation results in a conclusion that the person is not exceptional, the parent shall be so notified in writing. The notice shall inform the parent of his right to:

(i) review all data collected on the child;

(ii) request a program placement conference in accordance with §13.32 of this title (relating to school district initiated due process procedures); and

(iii) request a hearing on the recommendation in accordance with §13.32 of this title (relating to school district initiated due process procedures).

(2) If the review and interpretation result in a recommendation to develop an Individualized Education Program, the parent shall be notified by letter that the school district:

(i) has identified the person as exceptional;

(ii) is recommending special education placement; and

(iii) shall arrange conference for parents to participate in the development of the Individualized Education Program.

Cross References

This section cited in 22 Pa. Code §341.17 (relating to minimum annual review); and 22 Pa. Code §341.18 (relating to relation to hearing).

§341.14. [Reserved].

§341.15. Individualized education program.

The Individualized Education Program for each person assigned to special education programs or services shall include:

(1) a statement of the present level of educational performance of the person;

(2) a statement of annual goals which describes the expected behaviors to be achieved through the implementation of the Individualized Education Program of the person;

(3) a statement of short-term instructional objectives;

(4) a statement of specific educational services to be provided to the child, including a description of all special education and related services required to meet the unique needs of the child, any special instructional media and materials to be provided, and the type of physical education program in which the child will participate;

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(5) a description of the extent to which the child will be able to participate in regular education programs;

(6) the projected date for initiation and the anticipated duration of services; and

(7) appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the instructional objectives are being achieved.

Cross References

This section cited in 22 Pa. Code §341.13 (relating to evaluation).

§341.16. Individualized Education Program Conference.

(a) *Conference.* The Individualized Education Program shall be developed in a conference by:

(1) a representative of the school district or intermediate unit who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the person;

(2) the teacher of the person if the person is assigned to or is to be assigned to an approved private school, the private school teacher, and any other representative of the private school;

(3) the parents of the person;

(4) where appropriate, the person; and

(5) any person the parents want to attend.

(b) *Parent participation.* Each school district shall take steps to ensure that the parents of the person are present at the conference or are afforded the opportunity to participate. The conference shall be scheduled at a mutually agreed upon time and place unless it is clearly not possible or practical.

(1) In cases where it is not possible or not practical for all participants to attend, other alternatives to ensure full participation must be attempted, including individual or conference telephone calls.

(2) The Individualized Education Program conference may be conducted without the parent in attendance only if there is sufficient documentation of attempts to arrange a mutually agreed upon time and place, such as detailed records of telephone calls made or attempted and the results of such

calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the home or place of employment of the parents and the results of such visits.

(3) If a parent has a communication barrier, such as deafness or a primary language other than English, the local educational agency shall provide an interpreter or take whatever action is necessary to ensure that the parent understands the proceedings.

(c) *Time.* Implementation of the Individualized Education Program shall be in accordance with the following:

(1) There shall be no change in educational status until the Individualized Education Program has been developed in accordance with this section.

(2) For exceptional children currently receiving special education programs or services, the Individualized Education Program Conference shall be conducted prior to the 1977-78 school year.

(d) *Notice.* Upon completion of the Individualized Education Program conference, the due process notice may be given or mailed to the parent in accordance with §13.32 of this title (relating to school district initiated due process procedures).

Cross References

This section cited in 22 Pa. Code §341.17 (relating to minimum annual review); and 22 Pa. Code §341.18 (relating to relation to hearing).

§341.17. Minimum annual review.

(a) *Review and revision.* Each Individualized Education Program shall be reviewed at least annually and, if appropriate, revised in accordance with §341.16 of this title (relating to conference).

(b) *Reevaluation.* At least once every two years, the review or revision, or both, of the Individualized Education Program shall be based on an analysis of the documented cumulative record of the student by a team in accordance with §341.13(g) of this title (relating to evaluation). The reevaluation may include administration of individual psychological tests administered by a certified public school psychologist and other clinical examinations if needed. Parental consent is not required for a reevaluation. A reevaluation may be conducted more frequently than once every two years, if such is deemed appropriate by the local educational agency.

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Cross References

This section cited in 22 Pa. Code §341.18 (relating to relation to hearing).

§341.18. Relation to hearing.

(a) The Individualized Education Program is an education program developed jointly by the parents and school personnel. The Individualized Education Program may be revised periodically in accordance with §341.17(a) of this title (relating to minimum annual review). If a change in educational status, special education program, or related services provided to the student is to be recommended by the local educational agency as a revision of the Individualized Education Program, the provisions of §341.16 of this title (relating to Individualized Education Program conference) are to be followed, and subsequent notice and right to a hearing is to be provided in accordance with §13.32 of this title (relating to school district initiated due process procedures). A parent may request a reevaluation of the identification and assignment of the student annually in accordance with §13.33 of this title (relating to parent initiated due process procedures).

(b) If a hearing is requested, the hearing shall be held to determine the specific kinds of programs and services appropriate for the person, based on the evaluation conducted in accordance with §341.13 of this title (relating to evaluation) and any subsequent reevaluation that may have been conducted. The hearing officer shall, after the hearing, issue an opinion and order defining the assignment, program, and services in such specificity as the hearing officer deems necessary. An Individualized Education Program document shall then be developed jointly, in conformity with the decision of the hearing officer, by the parents, school personnel, and, where appropriate, the person, in accordance with §341.16 of this title (relating to Individualized Education Program conference) in order to supply any component of the Individualized Educational Program not noted, ruled upon, or recommended by the hearing officer in the decision of the hearing officer. The conference shall be scheduled within ten days after the decision has been rendered.

OPERATION

§341.21. General rule.

Special education programs and services shall be organized to effectively and efficiently implement the Individualized Education Program. Regardless of the choice of administrative arrangement, provision shall be made for the maximum amount of appropriate integration and contact with regular education students.

§341.22. Operating agent.

(a) *Designation.* The operating agent for special education programs and services shall be designated in the provisions of §341.31 of this title (relating to plans).

(1) *District operation.* Special education programs and services shall be developed and operated by a school district when the school district is able to provide effective and efficient programs, including adequate housing and supervision.

(2) *Intermediate unit operation.* Special education programs and services shall be developed and operated by the intermediate unit when the school district cannot effectively and efficiently support such programs and services.

(3) *Cooperative agreement.* To meet the needs of individual school-aged exceptional persons, a cooperative agreement may be developed among districts and intermediate units.

(4) *Approved private school.* To meet the needs of certain individual school-aged exceptional persons, an approved private school assignment shall be recommended and approved by district and intermediate unit professional staff whenever an appropriate placement cannot be provided within the local public schools solely because of the nature and incidence of the handicapping condition of the student. Whenever a school district and intermediate unit agree that the only source of an appropriate program of education for a school-aged person is in an approved private school, in accordance with the stated admission policy of the particular school, the recommendation and supporting evidence shall be forwarded to the Department for final approval in accordance with §171.13 and 171.16 of this title (relating to assignment and reevaluation).

(b) *Powers and duties.* The operating agent shall determine the operational, organizational, and administrative procedures of the special education programs and services it operates subject to the provisions of the school laws, Part I of this title (relating to Board of Education), and this chapter.

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PLANNING

§341.31. Plans.

Special education programs and services shall be administered in accordance with the intermediate unit plan for special education as set forth in section 1372(2) of the Public School Code of 1949 (24 P.S. §13-1372(2)).

Cross References

This section cited in 22 Pa. Code §341.22 (relating to operating agent); and 22 Pa. Code §341.35 (relating to approval of plans).

§341.32. Development of plans.

Each intermediate unit shall annually revise its plan in cooperation with its constituent school districts and, where appropriate, with approved private schools and other intermediate units.

(1) *School district plans.* Each school district shall develop and maintain a plan which specifies all special education programs and services to be district-operated and which designates those programs and services required from the intermediate unit. The plan shall also identify those regular education programs which may be used to implement Individualized Education Programs.

(2) *Intermediate unit plans.* School district plans shall be incorporated in the intermediate unit plan. Intermediate unit plans shall specify the programs and services to be operated by the intermediate unit and shall incorporate those programs and services operated by individual school districts including regular education programs which may be used to implement individualized Education Programs. The plan shall specify those programs and services required from approved private schools.

Cross References

This section cited in 22 Pa. Code §341.33 (relating to content of plans); and 22 Pa. Code §341.35 (relating to approval of plans).

§341.33. Content of plans.

In addition to the description of programs and services and needs required in §341.32 of this title (relating to development of plans), each intermediate unit plan shall include the following:

(1) A policy for the identification of all school-aged persons in need of special education programs and services in accordance with §341.12 of this title (relating to parent initiated identification).

(2) A strategy to provide immediately an appropriate education to any person identified under paragraph (1) of this section who is receiving no education.

(3) A strategy and timetable to develop special education programs and services for those identified under paragraph (1) of this section who are not receiving appropriate special education programs and services. Such strategy shall reflect the following priorities in accordance with the specific needs determined by the school district and the intermediate unit:

(i) Programs and services shall be provided for the more severely handicapped before programs are provided for the less severely handicapped and for the more gifted before the less gifted.

(ii) Programs and services shall be developed in accordance with a planned curriculum to provide a continuum of programs and services appropriate for the age and development of the student.

(iii) Programs and services shall be developed to provide a continuance of programs and services for appropriate student assignments in accordance with the priority order as provided in §13.11 (d) of this title (relating to program responsibilities).

Cross References

This section cited in 22 Pa. Code §341.35 (relating to approval of plans).

§341.34 [Reserved].

§341.35. Approval of plans.

(a) *General rule*. Intermediate unit plans for the operation of special education programs and services shall be submitted to the Department of Education, Division of Special Education, for approval. Plans shall be approved when the requirements of §§341.31 and 341.32 of this title (relating to plans and development of plans) are met.

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(b) *Criteria*. To determine compliance with §§341.32 and 341.33 of this title (relating to development and content of plans) the Department will apply the following criteria:

(1) Based on expected incidence rates, the programs are adequate in quantity to meet the needs of all severely handicapped persons within the intermediate unit.

(2) Based on expected incidence rates, the programs are adequate in quantity and variety to meet the needs of persons of every exceptionality as defined in §341.1 of this title (relating to definitions).

(3) Based on expected incidence rates, there is a full continuum of programs and services to permit the least restrictive assignment and the appropriate services in accordance with §13.11(d) of this title (relating to program responsibilities) and §341.51 of this title (relating to organization).

(4) Based on the following table, programs are adequate to deliver quality special education services. The plan may justify deviation from the table by describing why deviation will not affect or will enhance the quality of the programs.

Constant Enrollment [ADM] by Organizational Patterns*

Program Category and/or Level	*Itinerant*	*Resource Rooms*	*Part-Time*	*Full Time*
EMR Elementary	15-50	15-20	10-15	10-15
EMR Secondary	15-50	15-20	15-18	10-15
TMR Elementary	None	None	10-15	8-12
TMR Secondary	None	None	15-18	8-15
S & P Retarded	None	None	None	4-8
SED Elementary	15-50	15-20	10-15	6-12
SED Secondary	15-50	15-20	10-15	8-12
BI/LD Elementary	15-50	15-20	10-15	6-12
BI/LD Secondary	15-50	15-20	10-15	8-12
HI El./Sec.	15-50	5-15	6-10	5-8
SP&L El./Sec.	20-90**	None	None	[None]5-8
PH El./Sec.	15-50	5-15	6-12	6-12
Detention El./Sec.	None	None	None	1-15
VH El./Sec.	15-50	5-15	8-15	5-12
Gifted Elementary	15-[50] 75	10-20	10-18	10-18
Gifted Secondary	15-[50] 75	10-20	10-18	10-18

*The teacher's register is to carry no less than the minimum *CE* [ADM] of any pattern in the *chart*.

***Sessions with the child for Speech and Language:*

20 [*ADM*] *students* (5 sessions/student/week)
25 [ADM] *students* (4 sessions/student/week)
45 [ADM] *students* (2 sessions/student/week)
90 [ADM] *students* (1 session/student/week)

(5) Based on a review of the curriculum in accordance with §341.55 of

this title (relating to curriculum), the programs and services are educationally sound. The Department will develop and publish guidelines which describe appropriate kinds of curricula and types of service.

(c) *Disapproval*. Plans which do not meet the requirements of §§341.31 and 341.32 of this title (relating to plans and development of plans) will be disapproved. Prior to disapproval, appropriate division personnel will discuss the plan and suggest modifications with appropriate intermediate unit or school district personnel, or both.

(d) *Hearing*. If a plan is disapproved, the intermediate unit shall be entitled to a notice and a hearing in accordance with the Administrative Agency Law (71 P.S. §§1710.1-1710.51) and 1 Pa. Code Part II (relating to general rules of administration and procedure).

ORGANIZATION AND FUNCTION

§341.51. Organization.

The following organizational patterns will be approved by the Department:

(a) *Regular programs*. Regular programs do not qualify for special education funding but may meet the needs of certain exceptional persons. Instruction shall emphasize both subject content and development of special skills in accordance with the Individualized Education Program of the student.

(b) *Itinerant programs*. Itinerant programs shall be designed as follows:

(1) For students enrolled in regular classes who are generally expected to spend 25% or less of their time with an itinerant special education teacher. The itinerant teacher travels from school to school and instructs students in the development of special skills in accordance with the Individualized Education Program of the student.

(2) For students who have multihandicapping conditions enrolled in a special education class and who are required to spend up to 25% of their time in supportive instruction in skill development in accordance with the Individualized Education Program of the student. Instruction is provided on an individual or small-group basis by an itinerant special education teacher who travels from school to school.

(c) *Resource room*. Resource rooms shall be designed for students who are generally expected to spend 50% or less of their time with the special education teacher, whether in individual or in small-group instruction. Instruction shall emphasize development of special skills in accordance with the Individualized Education Program of the student rather than subject content. For the remainder of their time, students are assigned to regular education programs

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or to other types of special education programs.

(d) *Part-time special class*. Part-time special classes shall be designed for students who are generally expected to spend 50% to 85% of their time with the special education teacher. Instruction shall emphasize both subject content and development of special skills in accordance with the Individualized Education Program of the student. Up to 10% of the student time shall be spent in related activities as described under subsection (a) of this section. For the remaining time, students are released to participate in individual work experience, work training, or vocational education programs while their special education teacher is assigned to instruct a second group of students or to perform other responsibilities.

(e) *Full-time special class*. Full-time special classes shall be designed for students who are generally expected to spend 85% or more of their time with the special education teacher. Instruction shall emphasize both subject content and development of special skills in accordance with the Individualized Education Program of the student. The remaining student time shall be spent in related activities, such as art, music, physical education, industrial arts, and home economics, with emphasis on the concept of mainstreaming on an individual or group assignment basis.

Cross References

This section cited in 22 Pa. Code §341.35 (relating to approval of plans).

§341.52. [Reserved].

§341.53. Grouping.

Students shall be grouped according to their needs and chronological age in accordance with the following, provided that individual students shall be assigned in accordance with their Individualized Education Program:

(1) *Elementary*. Elementary programs shall include exceptional school-aged persons up to approximately 12 years and six months of age.

(i) Primary programs, when established, shall include school-aged exceptional persons up to approximately nine years and six months of age.

(ii) Intermediate programs, when established, shall include school-aged exceptional persons from approximately nine years and six months to approximately 12 years and six months of age.

(2) *Secondary*. Secondary school programs shall include exceptional school-aged persons from approximately 12 years and six months to 21 years

of age. If the exceptional school-aged person reaches the age of 21 any time after the school year begins, the person shall be allowed to continue in the program for that entire school year.

(i) Junior high school programs, when established, shall include school-aged exceptional persons from approximately 12 years and six months to approximately 15 years and six months of age.

(ii) Senior high school programs, when established, shall include school-aged exceptional persons from approximately 15 years and six months to 21 years. If the exceptional school-aged person reaches the age of 21 after the school year begins, the person shall be allowed to continue in the program for that entire school year.

(3) *Middle schools*. Middle school programs shall be established by prior approval from the Department in order to meet particular grouping arrangements within these schools.

§341.54. [Reserved].

§341.55. Curricula.

(a) *General rule*. Special education curricula shall be designed to meet the needs of special persons and shall be adapted, wherever possible, from regular curricula.

(b) *Integration*. Special education curricula shall be designed to coincide with regular education curricula and shall allow for and lead to the integration of school-aged exceptional persons in regular education programs when their needs dictate that regular education curricula is more appropriate.

(c) *Life skills*. Special education curricula shall be designed to stress general life skills and to maximize independence for those school-aged exceptional persons who differ to such an extent that their needs dictate curricular offerings different from those in regular education.

(d) *Competencies*. The curricula shall call for the acquisition of specific competencies in all areas of development, that is, cognitive, language, social, motor, self-help, vocational, and the like, in accordance with the Individualized Education Program of the student.

(e) *Review*. Special education curricula shall be subject to a review at least every two years and to revision as required.

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Cross References

This section cited in 22 Pa. Code §341.35 (relating to approval of plans).

§341.56. [Reserved].

§341.57. Personnel.

(a) *Certification*. Professional personnel shall meet the standards as defined in the Department of Education Professional and Staffing Policies and Guidelines for Certification of Professional School Personnel. Teachers shall hold the proper certification for special education assignment.

(b) *Paraprofessionals*. Paraprofessional and supportive personnel shall be employed in accordance with specific program needs.

(c) *Supervision*. Supervisory personnel shall be certificated and assigned in accordance with Professional Personnel and Staff Policies and Guidelines for Certification of Professional School Personnel.

(d) *In-service training*. School districts or intermediate units, or both, shall provide in-service training for teachers, special and regular, principals, administrators, and supporting staff responsible for programs for school-aged exceptional persons.

§341.58. Instructional materials, equipment, and supplies.

(a) *General rule*. Instructional materials, equipment, and supplies provided for exceptional school-aged persons shall be equivalent to those provided for school-aged persons in regular education and of comparable age, grade, and interest levels, with such modifications as may be necessary to meet the individual needs of the exceptional school-aged person and shall be subject to a review and approval by the Department.

(b) *Furniture*. Furniture shall be suited to the age, size, physical status, and individual needs of exceptional school-aged persons and shall be subject to review and approval by the Department.

(c) *Special equipment*. Exceptional school-aged persons who require special instructional materials, supplies, and equipment shall be provided with these items in accordance with the Individualized Education Program.

§341.59. Facilities.

(a) *General rule*. Special education schools and classrooms shall be comparable to regular schools and classrooms and shall conform to the requirements of school building regulations prescribed by the Department of Labor and Industry.

(b) *Conditions*. Facilities for special education programs and services shall include proper conditions for lighting, natural and artificial, ventilation, acoustical treatment, heating, and storage of materials and adequate supplies to insure a barrier-free learning environment.

(c) *Itinerant staff*. Itinerant teachers and specialists shall be provided with suitable and appropriate space for working with exceptional school-aged persons individually or in small groups within a school building.

RECORDS

Authority

The provisions of these §§341.61 — 341.70 issued under act of May 10, 1949 (P.L. 30, No. 14), § 1371 (24 P.S. §§ 13 — 1371), unless otherwise noted.

Source

The provisions of these §§341.61 — 341.70 adopted December 15, 1978, 8 Pa.B. 3571, unless otherwise noted.

§341.61. Confidentiality of education records of exceptional students.

(a) *Definitions*. The following words and terms, when used in these §§341.61 — 341.70 of this title (relating to records), shall have the following meanings unless the context clearly indicates otherwise:

Destruction — The physical destruction or permanent expungement of identifying data from the education records of a student so that the information in those records is no longer personally identifiable.

Directory information — Includes the following information relating to a student: the student's name; address; telephone number; date and place of birth; participation in school clubs, activities, sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; most recent previous educational institution or agency attended by the student; and other similar information.

Education records or records — Education records, as defined in 20 U.S.C. §§1232g (1970) and 45 C.F.R. Part 99 (1977), of an exceptional student who:

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(i) receives or has received special education and related services from a school district or an intermediate unit;

(ii) is enrolled or has been enrolled, pursuant to section 1376 of the Public School Code of 1949 (24 P.S. §13-1376), in an approved private school for exceptional students;

(iii) is enrolled or has been enrolled in program of special education operated by the Department; or

(iv) is enrolled or has been enrolled in the Scranton State School for the Deaf.

Educational agency or agency — The following shall constitute an educational agency or agency:

(i) A school district or an intermediate unit and any component part thereof which collects, maintains, or uses an exceptional student's education records containing personally identifiable information or releases such records or information.

(ii) An approved private school and any component thereof which, with regard to an exceptional student who is enrolled or has been enrolled in the approved private school as an approved placement student according to the provisions of section 1376 of the Public School Code of 1949 (24 P.S. §13-1376) collects, maintains, or uses the exceptional student's education records containing personally identifiable information or releases such records or information.

(iii) The Department and any component thereof, to the extent that the Department collects, maintains, or uses an exceptional student's education records containing personally identifiable information or releases such records or information.

(iv) The Scranton State School for the Deaf and any component thereof, to the extent that Scranton State School for the Deaf collects, maintains, or uses an exceptional student's education records containing personally identifiable information or releases such records or information.

Maintain — Includes in its meaning: retain custody of.

Personally identifiable — The information includes:

(i) the name of a student or the name of any of the student's family members;

(ii) the address of the student;

(iii) an identifying piece of information such as the student's telephone number or social security number;

(iv) a list of personal characteristics which would make the student's identity easily traceable by a person who was not already familiar with the student's identity; and

(v) other information which would make the student's identity easily traceable.

Release — The giving of access to or the allowance of inspection, transfer, disclosure, or communication of any portion of a student's education records which includes in it personally identifiable information; the term also means release to any person by any means.

Student — Any exceptional school age person or preschool pupil with respect to whom an educational agency maintains education records.

(b) *Education records plan for exceptional students.* Each educational agency which maintains education records of exceptional students shall develop a plan that contains policies and procedures for the collection, maintenance, release, and subsequent destruction of education records.

(1) The plan shall reflect the relevant provisions of these §§341.61 — 341.70 of this title (relating to records) and shall be submitted to the Department no later than December 30, 1978, for the approval of the Department.

(2) The plan shall be updated or revised as is necessary. Any updated or revised plan shall be submitted for the approval of the Department. The submission shall be made prior to the start of the school year or as requested by the Department.

(c) *Protection of confidentiality.* Each agency shall protect the confidentiality of education records containing personally identifiable information at the collection, storage, release, and destruction stages of that information.

Cross References

This section cited in 22 Pa. Code §341.63 (relating to student access rights); 22 Pa. Code §341.65 (relating to maintenance of records); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.62. Parent access rights.

(a) *Compliance with parent request for access to records.* Each educational agency, upon request of a parent, shall permit the parent to inspect, review, or copy any education record relating to the exceptional child or children of that parent when such record is collected, maintained, or used by the agency.

(1) The agency shall comply with the request within 30 days after the request is received.

(2) When the request is made to a school district or an intermediate unit, it must be complied with prior to a conference with the parent regarding an individualized education program and prior to a hearing relating to identification, evaluation, or placement of a child.

(b) *Scope of parent right of access.* The right to inspect, review, or copy education records under subsection (a) of this section includes:

(1) the right of a parent to request of and receive from the educational agency a reasonable and concise explanation of information contained in the education records of the child;

(2) the right of a parent to be provided, on request, with a copy of all or part of the education records of the child; and

(3) the right of a parent to designate a representative who will inspect, review, or copy the records.

(c) *Cost of copies.* If a parent request copies of education records from an agency, the agency may charge the parent a reasonable cost which is not to exceed the actual expense of the duplication, reproduction, or photocopying; however, no cost shall be charged to a parent which would effectively prevent the parent from inspecting and reviewing the record or records. No cost shall be charged to a parent for the search for or retrieval of records.

(d) *List of location and types of records.* A parent shall have the right to request a list of both the location of the child's education records collected, maintained, or utilized by the agency and the types of education records regarding the child that the agency collects, maintains, or utilizes.

(e) *Parent requests in writing.* At the discretion of the agency and for verification and records-keeping purposes only, an agency may require all parents to put into writing:

(1) their requests to inspect, review, copy, or receive copies of education records;

(2) their designation of a representative; and

(3) their requests, under subsection (d) of this section, for a list.

(f) *Records on more than one child.* If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the specific information relating to their child or to be informed of that specific information.

(1) A parent shall have the right to copy from or receive a copy of an education record originally containing information on more than one child.

(2) Prior to the parent copying or receiving a copy of a record on more than one child, the agency shall delete, remove, or obscure from the record or its copy all personally identifiable information concerning any child who is not the child of such parent.

Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); 22 Pa. Code §341.63 (relating to student access rights); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.63. Student access rights.

Whenever a student has attained 18 years of age or is attending an institution of postsecondary education, the rights accorded to and the consent required of the student's parent under these §§341.61 — 341.70 of this title (relating to records) shall thereafter only be accorded to and required of the student.

Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.64. Access record.

(a) *Contents of access record.* Each agency shall keep a record of parties who have obtained access to those education records of a student that contain personally identifiable information and that are collected, maintained, or used by the agency. The access record shall include the name of the party, the date access was given, and the purpose for which the party was allowed to use the records.

(b) *Exceptions.* No record is required for the authorized employes of the agency, the parents of the student, or those persons who have received parent consent for access or release and who have gained access to the education records of the student.

(c) *Parent right to inspect access records.* A parent shall have the right to inspect the access record kept for the education records of his child.

(d) *List of persons authorized to have access.* Each agency shall maintain, for public inspection, a current list of the names and positions of those agents and employes of the agency who are authorized by the agency to have access to personally identifiable information.

(e) *Inspection.* The access record may be inspected by the agency officials responsible for maintaining education records, the parent, and those State and Federal educational officials responsible for monitoring the record keeping procedures of the agency.

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Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); 22 Pa. Code §341.63 (relating to student access rights); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.65. Maintenance of records.

(a) *Responsible official.* Each agency maintaining education records on students shall designate an official who shall be responsible for insuring that confidentiality policies and procedures established under §341.61(b) of this title (relating to confidentiality of education records of exceptional students) are enforced and administered. This official shall:

(1) annually notify parents of the policies and procedures of the agency regarding student education records and the rights of parents under both Pennsylvania and Federal law concerning the confidentiality of education records of exceptional students;

(2) develop a system of safeguards which will protect the confidentiality of student records containing personally identifiable information at the point of collection, storage, release, and destruction of such records;

(3) provide training and instruction in the implementation of Federal, State, and agency records policy requirements for all agency personnel who collect or use student records containing personally identifiable information; and

(4) secure for public inspection a current listing of the names and positions of those agents and employes of the agency who are authorized by the agency to have access to student records containing personally identifiable information.

(b) *Destruction.* Destruction of records shall conform with the following:

(1) The agency shall inform the parents of a student when personally identifiable information is no longer relevant to and necessary for the provision of educational services to the student.

(2) Upon the request of the parents, information no longer relevant to and necessary for the provision of educational services to the student must be subjected to destruction by the agency; however, a separate, written record of a student's name, address, phone number, grades, attendance records, classes attended, grade level completed, and year completed must be maintained for at least 100 years beyond the date the student attains the age of 21.

(3) Except as is stated in paragraph (2) of this subsection, nothing in this section shall be construed to mean that an agency is required to destroy education records.

(4) Prior to the destruction of the information referred to in paragraph (2) of this subsection, the agency shall send written notification to the parents which shall inform the parents of their right to receive a copy of the records to be destroyed. Notification is not required for the agency's destruction of extra copies of records maintained by the agency.

(5) No agency shall destroy education records containing information necessary for the education of a student who is enrolled or has been enrolled in an education program operated by that agency.

(c) *Maintenance pending request for release.* An agency shall continue to maintain education records pending:

(1) a parent request to inspect, to have access to, or to release student records to the parent or a parent-consented-to third party; or

(2) a request for mandatory release made pursuant to §341.67 of this title (relating to release of information).

Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); 22 Pa. Code §341.63 (relating to student access rights); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.66. [Reserved].

Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); 22 Pa. Code §341.63 (relating to student access rights); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.67. Release of information.

(a) *Parental consent required.* Written parental consent shall be obtained by the agency before education records containing personally identifiable information or personally identifiable information itself is released by the agency to any party unless:

(1) such release is authorized by 20 U.S.C. §1232g (1970) and 45 C.F.R. Part 99 (1977);

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(2) the information released is directory information and the release is made under the conditions specified in §341.68 of this title (relating to directory information);

(3) the agency releasing the information or records is an approved private school and the agency receiving the information or records is the student's school district of residence, the student's intermediate unit, or the Department, if the receiving agency has requested the information in order to review, reevaluate, or monitor students' placements, educational progress, or enrollment status at the approved private school, or to comply with reporting requirements of the State or Federal government or in connection with its audit of the school's use of school district, intermediate unit, State, or Federal funds; or

(4) the agency requesting the information or record is a school district in which the student is enrolled or seeks to be enrolled.

(b) *Release explanation.* If under this section parental consent is required for release of information, then prior to requesting consent, the releasing agency shall provide the parent with a concise, written explanation, which shall include a general description of the information or record to be released, the form of the release, the reason the release was requested, the party or agency requesting the release, and the party or agency to which the release is to be made.

(c) *Mandatory release by approved private schools.* If an approved private school is requested by either a student's school district of residence, a student's intermediate unit, or the Department to release student education records or personally identifying information from records of a student, then the approved private school shall comply with the request within seven days of its receipt of the request.

(d) *Mandatory release by all agencies.* If a school district in which a student is enrolled or seeks to be enrolled requests that an agency release student records or personally identifying information from records of the student, the agency shall comply with the request within seven days of its receipt of the request.

Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); 22 Pa. Code §341.63 (relating to student access rights); 22 Pa. Code §341.65 (relating to maintenance of records); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.68. Directory information.

(a) *Former student*. An agency may, without parental consent, release directory information from the education records of an individual no longer enrolled in that agency.

(1) Personally identifiable information may be included in the directory information released under this subsection so long as the personally identifiable information itself falls within the categories included in the definition of directory information.

(2) If the individual reenrolls in the agency, any further release of directory information by the agency shall be accomplished in accordance with the provisions of subsection (b) of this section if those provisions had not been satisfied during the period of previous enrollment.

(b) *Present student*. An agency may, without parental consent, release personally identifiable information from the education records of a student who enrolled in the agency if that information has been designated as directory information under the procedures stated in subsection (c) of this section.

(c) *Designation of directory information*. An agency which wishes to designate directory information shall give public notice of:

(1) the categories of personally identifiable information which the agency has designated as directory information;

(2) the right of the parent of the student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to the student as directory information; and

(3) the fact that the parent of the student may prevent the release by the agency of personally identifiable information designated as directory information if, within 30 days of the publication of the public notice, the parent informs the agency in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(d) *Publication of public notice*. The publication of the public notice under subsection (c) of this section may be accomplished by mailing the notice to the parent.

(e) *Dual enrollment*. For the purposes of this section, a student either enrolled under the provisions of section 1376 of the Public School Code of 1949 (24 P.S. §13-1376) in an approved private school or enrolled in Scranton School for the Deaf shall be considered to be also enrolled in his school district of residence.

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Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); 22 Pa. Code §341.63 (relating to student access rights); 22 Pa. Code §341.67 (relating to release of information); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

§341.69. Parent request for amendment of records.

(a) *Request to amend*. A parent who believes that information in education records collected, maintained, or used under these §§341.61 — 341.70 of this title (relating to records) is inaccurate or misleading or violates the privacy or other rights of the child may request the agency which maintains the information to amend the information.

(1) At its discretion, the agency may require that a parent request for amendment of an education record be made in writing and contain a brief statement which specifies the records to be amended and the reason that amendment is requested.

(2) The agency shall decide whether to amend the information in accordance with the request of the parent within 45 days after receipt by the agency of the request to amend.

(3) If the agency decides to refuse to amend the information in accordance with the request of the parent, the agency shall inform the parent in writing of both the refusal and the specific reasons for the refusal and shall notify the parent in writing of the right to request and receive a hearing under subsection (b) of this section.

(b) *Records hearing*. The agency shall, on parent request, provide the parent with an opportunity for a hearing to challenge information in education records if the parent alleges that such information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child. The hearing shall be conducted according to the following provisions:

(1) The hearing shall be held at a mutually agreed upon time and place within 30 days after the agency receives the request for a hearing from the parent.

(2) The parent shall be notified in writing of the date, place, and time of the hearing, no later than five days in advance of the hearing.

(3) The hearing shall be conducted by a party who does not have a direct interest in the outcome of the hearing.

(4) The party conducting the hearing may be an official of the educational agency.

(5) The parent shall be afforded a full and fair opportunity to present evidence relevant to the issues in subsection (a) of this section.

(6) The parent may, at the hearing, be assisted or represented by persons of his choice and at his own expense; such persons may include legal counsel.

(c) *Decision after hearing*. The agency shall render a written decision on the issues presented at the hearing and shall render such decision within 30 days after the conclusion of the hearing. The decision shall be based solely upon evidence presented at the hearing and shall include a summary of the evidence and the reason for the decision.

(d) *Decision to amend*. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or stated rights of students, it shall amend the education records accordingly and so inform the parent in writing.

(e) *Decision not to amend*. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, it shall inform the parent of his right to place in the education record of the student a statement which sets forth the written comments of the parent upon the information in the education records or reasons for disagreeing with the decisions of the agency, or both written comments and reasons.

(1) The statement of the parent shall be appended by the agency to the education records so long as the record or the contested portion thereof is maintained by the agency.

(2) If the education records of the student or the contested portion thereof is released by the agency to any party, the statement of the parent shall also be released to the party.

(f) *Meetings not prohibited*. Nothing in this section shall be interpreted to mean that the parent and the agency may not, by mutual agreement, meet prior to either a parent request for a hearing or the hearing itself in order to discuss the concerns of the parent regarding the accuracy of the records of the student.

Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); and 22 Pa. Code §341.63 (relating to student access rights).

§341.70. [Reserved].

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Cross References

This section cited in 22 Pa. Code §341.61 (relating to confidentiality of education records of exceptional students); 22 Pa. Code §341.63 (relating to student access rights); and 22 Pa. Code §341.69 (relating to parent request for amendment of records).

BUDGET

§341.71. Special education budgets.

(a) *Preparation*. Each intermediate unit shall prepare annually, in conjunction with its component school districts, a budget for the operation of special education programs and services.

(b) *Forms*. The budgets shall be prepared on budget forms which identify the costs of intermediate unit special education programs and the excess costs of school district special education programs. For this purpose, average daily membership shall be calculated and reported as follows:

(1) Equivalent full-time Average Daily Membership (EFT/ADM) in speech and language itinerant service shall be calculated and reported in accordance with section 2509 of the Public School Code of 1949 (24 P.S. §25-2509).

(2) Equivalent full-time Average Daily Membership (EFT/ADM) for all other "itinerant service" shall be four.

(3) Equivalent full-time Average Daily Membership (EFT/ADM) for all resource rooms shall be six.

(4) Equivalent full-time Average Daily Membership (EFT/ADM) for part-time and full-time special education classes shall be the number of persons assigned multiplied by the percentage of time in special education.

(c) *Submission*. Prior to funding, each intermediate unit budget shall be submitted to the Department of Education, Division of Special Education. The Division will review budget submissions to insure that requested program funding is reasonable and consistent with the intermediate unit plan for the operation of special education programs and services.

(d) *Approval*. A budget will be approved when the fund request is reasonable and conforms to the intermediate unit plan for the operation of special ed-

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ucation programs.

(e) *Disapproval*. The Secretary of Education may disapprove a budget or a line item in a budget if, after consultation with the Division of Special Education, the Secretary determines that the request for funding is not reasonable or not consistent with the intermediate unit plan for the operation of special education programs and services.

(1) Prior to disapproval, appropriate Department personnel will discuss the budget and the plan with the appropriate school district and intermediate unit personnel.

(2) If a budget or a line item in a budget is disapproved, the intermediate unit shall be entitled to a notice and a hearing in accordance with the Administrative Agency Law (71 P.S. §§1710.1-1710.51) and 1 Pa. Code, Part II (relating to general rules of administration and procedure).

EXCLUSION

§341.91. Disciplinary exclusions of certain handicapped students from special education placement.

(a) *Definitions*. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Educational agency* —A school district, an intermediate unit, or an approved private school.

(2) *Exclusion* —A suspension, expulsion, disenrollment, or transfer of a student by an educational agency from the school in which the student is in attendance for a violation of established school rules and law dealing with student conduct, as outlined in Chapter 12 of this title (relating to students).

(b) *Due process hearing required*. A due process hearing shall be required in the following circumstances:

(1) *Change in educational placement*. If an educational agency excludes a student who is either socially and emotionally disturbed or learning disabled from a program of special education and if this exclusion exceeds or has been proposed to exceed ten days, then this exclusion constitutes a change in educational placement or status. Such an exclusion may not, therefore, occur if the due process procedures set forth in this subsection have not been complied with.

(2) *School district-initiated due process procedures*. Before an educational agency can exclude or propose to exclude, for more than ten days, a

student who either is socially and emotionally disturbed or is learning disabled from a program of special education, the educational agency must follow the procedures set forth in §13.32 of this title (relating to school district initiated due process procedures). This means, among other things, that the district must provide the parents of the student with notice, the opportunity for a special education due process hearing, and such other rights as are outlined in that section.

(3) *Parent-initiated due process procedures.* If an educational agency either excludes or proposes to exclude a socially and emotionally disturbed or learning disabled student from a program of special education for a period exceeding ten days, the parents of the student shall have the right to request a due process hearing, pursuant to §13.31 of this title (relating to opportunity for due process procedure), in order to contest such exclusion or proposed exclusion.

(4) *Exclusions of ten days or less.* Nothing in this section shall be interpreted to mean that existing due process or hearing procedures, under other sections of this title, dealing with exclusions of ten days or less are in any way superseded by this section.

(c) *Approved private schools.* Approved private schools shall conform with the following:

(1) An approved private school which proposes to exclude a student in the circumstances stated in subsection (b) of this section shall inform both the parents of the student and school district of the proposal.

(2) Upon receipt of a notice from an approved private school that it proposes to exclude, for more than ten days, a student who either is socially and emotionally disturbed or is learning disabled, the school district of residence shall initiate the procedures outlined in §13.32 of this title (relating to school district initiated due process procedures).

(3) Nothing in this section shall be interpreted to mean that any other section of this title dealing with the disenrollment, suspension, or expulsion of a handicapped student from an approved private school is hereby superseded by this section.

Source

The provisions of this §341.91 adopted April 14, 1978, 8 Pa.B. 1102.

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COMMONWEALTH OF PENNSYLVANIA

August 30, 1978

SUBJECT: Suspensions and Exclusions of Exceptional
School-Aged Persons

TO: Chief School Administrators
Intermediate Unit Executive Directors
Directors of Special Education
Elementary and Secondary Principals

FROM: Gary J. Makuch, Director Gary J. Makuch
Bureau of Special Education

Following are requirements for suspensions and exclusions of exceptional school-aged persons. This replaces requirements listed in BEC 42-77 at Part V.

I. MENTALLY RETARDED

Attorney General Opinion 35-73, the Consent Agreement and §13.62(2) 22 Pa. Code, indicate that a suspension of a mentally retarded person for any length of time is a change in educational assignment, requiring notice and provision of the opportunity for a due process hearing as outlined in §13.32, Chapter 13, 22 Pa. Code. Therefore, the school district must issue the due process notice to the parent and receive parental approval prior to a suspension, or any other change in assignment of a mentally retarded person.

Under certain circumstances, the Bureau of Special Education may approve suspensions, exclusions or interim changes of assignment for the mentally retarded. If such approval is granted, the school district must still give the parent notice and the opportunity for a hearing. Requests for approval of exclusions of more than 10 days must be in writing.

Criteria for Submitting Requests to the Bureau of Special Education

A school district may request approval for the suspension of a mentally retarded person if:

A) Parental consent to the suspension could not be obtained because the school official:

   1. was unable to contact the parent in order to inform him/her of the proposed suspension; or

   2. informed the parent of the proposed suspension and the parent requested a hearing and refused to grant permission for an interim suspension pending the hearing itself.

B) The student's continued presence in school presents a danger to himself/herself or to others. Examples of such emergency situations are:

1. physical assault, or threatened assault on a teacher, or another student,
2. action of a criminal nature taking place on school property,
3. continuous disruptive conduct which undermines classroom or school discipline and which the school has attempted but failed to control.

Suspensions of the mentally retarded which are not of an emergency nature are not to be approved by this Bureau. The school district must follow the due process procedures (give the parent notice and opportunity for a due process hearing) prior to suspension. The district will have no obligation to call this Bureau.

II. SOCIALLY AND EMOTIONALLY DISTURBED AND BRAIN INJURED/LEARNING DISABLED

To exclude any socially and emotionally disturbed and/or brain injured or learning disabled student for more than 10 days (§341.90, Chapter 341, 22 Pa. Code), notice and opportunity for a special education due process hearing must be given and parental permission must be obtained. To suspend such students for 1 to 10 days the procedures outlined in Chapter 12, 22 Pa. Code, Student Rights and Responsibilities are to be followed.

Criteria for Submitting Requests to the Bureau of Special Education

The Bureau of Special Education may approve an exclusion for more than 10 days of such a student. Approval for an exclusion may only be granted under the circumstances listed for the mentally retarded. Requests for approval of exclusions of more than 10 days must be in writing.

III. OTHER EXCEPTIONAL

Suspensions and exclusions of other exceptional school-aged persons (physically handicapped, hearing impaired, visually handicapped, speech and language impaired, and gifted and talented) are to be handled according to procedures outlined in Chapter 12, 22 Pa. Code, Student Rights and Responsibilities.

Direct request for information or approval to:

Linda D. O'Connor
Right to Education Adviser
Division of Regional Review
Bureau of Special Education
Pennsylvania Department of Education
7th Floor, 333 Market Street
Harrisburg, PA 17126
Phone: 717-787-4714

In her absence calls or requests will be given to:

Carl E. Thornton
Chief
Division of Regional Review

William F. Ohrtman
Chief
Division of Policy, Liaison and Resource Management

Elaine E. Gilvear
Chief
Division of Federal Programs and Special Projects

Samuel Bashore
Chief
Division of Planning and Auditing

APPROVED PRIVATE SCHOOLS LISTING

BUREAU OF SPECIAL EDUCATION
PENNSYLVANIA DEPARTMENT OF EDUCATION
SEPTEMBER 1980

LEGEND

PR - Preschool

K - Kindergarten

E - Elementary

S - Secondary

UN - Ungraded

RES - Residential
7 - Full week
5 - Not weekend

BL - Blind

BD - Brain Damaged

CP - Cerebral Palsy

DF - Deaf

MD - Muscular Dystrophy

SED - Socially and Emotionally Disturbed

MR - Mentally Retarded

Under §1376-1377 of the School Laws of Pennsylvania, 1949, as amended, the Commonwealth may provide financial assistance to approved private schools for costs of tuition for certain exceptional persons. For persons from the ages of 2 to 6 years, the costs are borne by the state. For persons from the ages of 6 to 21 years, costs are borne 80 percent by the state and 20 percent by the school district of residence of the student's parent/legal guardian.

Exceptional persons enrolled in approved private schools are those who may be blind or deaf, cerebral palsied, brain damaged, muscular dystrophic, mentally retarded, or socially and emotionally disturbed. All enrollments of such persons must have the approval of the Department of Education.

An approved private school is a private school licensed by the State Board of Private Academic Schools where the specific special education program for certain exceptional handicapped persons is approved by the Secretary of Education, through the Bureau of Special Education, and is thereby eligible to receive payments for tuition, or tuition, board and lodging, from school district and/or Commonwealth funds.

Maximum amounts payable for costs of tuition or tuition board and lodging, are established by Sections 1376-1377 of the School Laws, as amended.

Tuition and/or tuition, board and lodging payments for the assignment of an exceptional child in an appropriate program in an approved private school will be made by the state only as of the date of Department of Education approval of the child's enrollment in that program.

When parents choose to enroll their exceptional child in an approved private school prior to department approval of that enrollment, the cost or tuition and/or tuition, board and lodging will not be paid by the state.

No private institution receiving payment in accordance with this section shall impose any charge on the student and/or parents who are Pennsylvania approved reimbursable residents for a program of special education and board and lodging appropriate to the child's needs; except that charges for programs not part of the normal school year may be made as per the standards contained in 22 Pa. Code §171.11 et seq.

All data herein relates to approved private schools situated in Pennsylvania. In rare instances, an out-of-state school offering a highly specialized educational program for persons with severe multi-handicaps may be approved for enrollment of individual Pennsylvania persons when it is recognized by appropriate host-state licensing authority as a school for handicapped persons and has an educational program suitable for the type of persons for whom state funds must be expended. Parents and/or legal guardians are cautioned that any placement in an approved private school, in or out-of-state, must be recommended by the school district of residence and intermediate unit and approved by the Department of Education before state financial aid for tuition or tuition, board and lodging will be granted. Children must be assigned to an appropriate program; that is a program of special education for exceptional persons which meets their individual needs.

For a partial list of available out-of-state schools, contact Dr. George W. Severns, Jr., at 717-783-6909.

		Program							Facilities Available			
Approved Private School	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Admission Age	Grades
Activity and Development Center for Children and Youth 5244 Clarwin Avenue Pittsburgh, PA 15229 Telephone: 412-931-7404	No		X						X		4.7-18	K-12 Un
Ashbourne School Ashbourne Road and Park Avenue Elkins Park, PA 19117 Telephone: 215-635-5252	No		X					X	X		5-21	K-12 Un
The Gertrude A. Barber Center for Exceptional Children and Adults 136 East Avenue Erie, PA 16507 Telephone: 814-453-7661	No		X	X		X	X		X	5	2-21	PR K-12 Un
Benchmark School 2107 North Providence Road Media, PA 19063 Telephone: 215-565-3741	No		X					X	X		6-14	K-12
Bridge School 8400 Pine Road Philadelphia, PA 19111 Telephone: 215-432-5000	No							X	X		13-17	Un

		Program							Facilities Available			
Approved Private School	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Admission Age	Grades
Centennial School Lehigh University Duh Drive Bethlehem, PA 18015 Telephone: 215-861-3000	No							X	X		2-18	PR-12
Child Development Center 1605 West Main Street Norristown, PA 19403 Telephone: 215-539-6600	No		X	X		X			X		2-8	PR K-P-E
Craig House-Technoma Workshop 751 North Negley Avenue Pittsburgh, PA 15206 Telephone: 412-361-2801	No							X	X		6-18	PR-S Un
Davidson School 111 Elwyn Road Elwyn, PA 19063 Telephone: 215-566-8800	No		X		X		X	X	X	5	3-21	PR-12 U
Delta School Suite 408, 1950 Street Road Cornwell Heights, PA 19020 Telephone: 215-632-5900 Annex Delta School - Woodhaven Rd. Ottsville Newtown	3		X					X	X		BD 4-21 SED 4-16	PR-12 U SED-PR-

		Program							Facilities Available			
Approved Private Schools	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Age	Grades
DePaul Institute Castlegate Avenue Pittsburgh, PA 15226 Telephone: 412-561-4848	No				X				X		2-7	PR-10 Un
The Devereux School Devon, PA 19333 Attn: Devereux Day School Telephone: 215-687-3000	No		X					X	X	7	BD 5-18 SED 6-18	K-12 1-12 Un
Easter Seal Society for Crippled Children and Adults of Allegheny County 110 Seventh Street Pittsburgh, PA 15222 Telephone: 412-281-7244 Annexes Beulah Presbyterian Church Pleasant Hills Community Presbyterian Church Westminster Presbyterian Church St. John's Lutheran Church Northmont Presbyterian Church Northgate Bible Baptist Church	7		X	X		X			X		2-8	PR-2

		Program							Facilities Available			
Approved Private Schools	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Age	Grades
Easter Seal School (Phila.) Easter Seal School for Handicapped Children 3975 Conshohocken Avenue Philadelphia, PA 19131 Telephone: 215-879-1000 Annex Bucks County Easter Seal School for Handicapped Children Levittown, PA Montgomery County Easter Seal School for Handicapped Children Lansdale, PA	2		X	X		X			X		2-8	PR-K
George Crothers Memorial School P. O. Box 2051 Aston, PA 19014 Telephone: 215-872-8848	No		X	X					X		2-16	PR-K-P-E
Green Tree School 143 West Walnut Lane Philadelphia, PA 19144 Telephone: 215-844-2324	No		X					X	X		4-16	PR-E Un

		Program							Facilities Available			
Approved Private Schools	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Admission Age	Grades
Highland School 44 Highland Avenue Bethel Park, PA 15102 Telephone: 412-833-0050 Annex Upper St. Clair	1							X	X		6-18	1-12
Home for Crippled Children 1426 Denniston Avenue Pittsburgh, PA 15217 Telephone: 412-521-9000	No		X	X					X		2-21	PR-S
Home of the Merciful Saviour for Crippled Children 4400 Baltimore Avenue Philadelphia, PA 19104 Telephone: 215-222-2566	No			X					X	7	2-12	PR-E
The Lafayette School 5800 North Marvine Street Philadelphia, PA 19141 Telephone: 215-548-7200	No		X					X	X		4-21	K-12
Main Line Day School College Avenue and Darby Road Haverford, PA 19041 Telephone: 215-649-7190	No							X	X		6-21	1-12

		Program							Facilities Available			
Approved Private Schools	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Age	Grades
Martin Luther School Silver Springs Township Line Road Plymouth Meeting, PA 19462 Telephone: 215-825-4440	No							X	X		6-13	1-8 Un
The Melmark School Wayland Road Berwyn, PA 19312 Telephone: 215-353-1726	No		X				X		X	7	4-21	Un
Overbrook School for the Blind 64th Street and Malvern Avenue Philadelphia, PA 19151 Telephone: 215-877-0313	No	X							X	7	2-21	PR-12 PDE does not pay tuition for elementar
Pace School 200 South Beatty Street Pittsburgh, PA 15206 Telephone: 412-444-1111	No		X					X	X		6-14	K-E
Parkway Day School 130 West Schoolhouse Lane Philadelphia, PA 19144 Telephone: 215-848-9800	No		X					X	X		BD 4.7-16 SED 4.7-21	BD K-E Un SED K-S

		Program							Facilities Available			
Approved Private Schools	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Age	Grades
The Pathway School Box 18 Audubon, PA 19407 Telephone: 215-277-0660	No		X						X	7	5-14	K-12
The Pennsylvania School for the Deaf 7500 Germantown Avenue Philadelphia, PA 19119 Telephone: 215-247-9700	No				X				X	5	2-21	PR-12
Pressley Ridge School 530 Marshall Avenue Pittsburgh, PA 15214 Telephone: 412-321-6995 Annex St. Margaret Mary School Building 807 Beaver Grade Road Coraopolis, PA 15108	1							X	X		5-17	K-S
Royer-Greaves School for Blind 118 South Valley Road Paoli, PA 19301 Telephone: 215-644-1810	No	X								7	4.7-20	K-12

Approved Private Schools	Annexes	Program							Facilities Available		Age	Grades
		BL	BD	CP	DF	MD	MR	SED	DAY	RES		
St. Christopher's Hospital Nursery Schools 2600 North Fifth Street Philadelphia, PA 19133 Telephone: 215-427-5498 Annex 2661 North Lawrence Street Philadelphia, PA 19133	1		X	X	X				X		DF 2½-5 BD 3-5 CP 3-5	PR-K
The Scranton State School for the Deaf 1800 North Washington Avenue Scranton, PA 18509 Telephone: 717-961-4040	No				X				X	5	2-21	PR-12
The Summit School 2140 Trenton Road Levittown, PA 19056 Annex 1732 Woodbourne Road Levittown, PA Telephone: 215-946-4868	1		X						X		4-21	PR-S
Timothy School 625 Montgomery Avenue Bryn Mawr, PA 19010 Telephone: 215-525-7101	No							X	X		3-8	PR-K Un

		Program							Facilities Available			
Approved Private Schools	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Age	Grades
Valley Day School 1666 Edgewood Road Yardley, PA 19067 Telephone: 215-493-3628	No		X					X	X		2-14	PR-E
The Vanguard School Box 730 Paoli, PA 19301 Telephone: 215-647-3993	No		X					X	X		6-18	1-12
D. T. Watson Rehabilitation Hospital for Children Camp Meeting Road Sewickley, PA 15143 Telephone: 412-741-9500	No		X	X		X			X	7	3-21	PR-S
Western Pennsylvania School for Blind Children 201 North Bellefield Avenue Pittsburgh, PA 15213 Telephone: 412-621-0100	No	X							X	5	2-21	PR-12-UN
Western Pennsylvania School for the Deaf 300 East Swissvale Avenue Pittsburgh, PA 15218 Telephone: 412-371-7000	No				X				X	5	2-21	PR-12

		Program							Facilities Available			
Approved Private Schools	Annexes	BL	BD	CP	DF	MD	MR	SED	DAY	RES	Age	Grades
The Woods Schools Landhorne, PA 19047 Telephone: 215-757-3731	No		X						X	7	4.7-21	K-12
Wordsworth Academy Pennsylvania Avenue and Camp Hill Road Fort Washington, PA 19034 Telephone: 215-643-5400	No		X					X	X	5	3-21	PR-12 Un

BEC BASIC EDUCATION CIRCULAR 3-80

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF EDUCATION

SUBJECT: Due Process Procedures for Exceptional School-Aged Persons

Date issued March 1, 1980

TO: Pennsylvania School Administrators

FROM: Ronald H. Lewis RHL
Commissioner for Basic Education

The attached Due Process Procedures for all exceptional school-aged persons replace those outlined in BEC 42-77 dated September 30, 1977, located in Volume 14 of the Pennsylvania Basic Education Laws, Regulations, Standards and Circulars, pages 14-111 to 14-126.

These procedures have been revised to improve and simplify communication. This revision is a result of working knowledge gained from several years of experience with BEC 42-77 including local education agency input. These procedures incorporate the requirements of the State Board Special Education Regulations (22 Pa. Code Ch. 13), PDE Special Education Standards (22 Pa. Code Ch. 341) and the requirements of the federal regulations for the Education of All Handicapped Children Act (45 CFR §121a.500-576).

Major changes are:

1. The material in the notices has been presented in a concise fashion and has been typeset.
2. The individualized portion of the Notice of Recommended Assignment has been reduced to one page with an attachment. The three pages outlining parent rights may serve the dual function of notice to parents and general information regarding due process procedures.
3. The section on parent initiated procedures has been clarified.
4. The priority order of assignment has been deleted. A list of placement options considered and the reasons these alternatives were not recommended must be included in the Notice by written attachment.
5. The section on procedures for Speech and Language Impaired has been clarified.

This BEC should be included in the PDE publication entitled, Pennsylvania Basic Education Laws, Regulations, Standards and Circulars. The placement information is provided below.

PROPER PAGE LOCATION 14 140A thru 140M
Vol. No. PAGE NO.

REMOVE BEC NO. 42-77
PAGE LOCATION 14-111 to 14-126

6. Requirements concerning 1305 and 1306 placements have been changed to simplify local education agency involvement.

Included are due process procedural requirements for:

1. Request for Permission to Evaluate.
2. Notice of Intent to Reevaluate.
3. Notice that Student is not Exceptional.
4. Request for Parent Participation in an IEP Planning Meeting.
5. Notice of Recommended Assignment (Exhibit I).
6. Pre-hearing Conference Report (Exhibit II).
7. Parent Initiated Due Process (Exhibit III).
8. Notice of Recommended Speech and Language Program (Exhibit IV).
9. Responsibility for Residents and Nonresidents.

If you have a supply of forms outlined in BEC 42-77, you may use them. However, begin to use the attached forms no later than July 1, 1980.

Please address questions/hearing requests to:

Linda D. O'Connor
Right to Education Adviser
Division of Regional Review
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126
717-787-4714

1. REQUEST FOR PERMISSION TO EVALUATE

Prior to conducting an initial individual evaluation of a student, written permission must be obtained from the parent/guardian, surrogate parent, or student, whichever is appropriate.* This procedure does not apply to re-evaluation, group screening, or review of the student's existing psycho-educational records, reports and diagnostic evaluations. 22 Pa. Code §341.12 requires written notice** which states:

A. The person has been referred for evaluation.

B. The basis upon which the referral was made.

C. The parent has the right to inspect and review all relevant school records about his or her child.

D. The procedures and specific types of tests which will be used in the evaluation and the approximate dates of such procedures.

E. The right of the parent to meet with a public school psychologist to discuss the referral and proposed evaluation procedures.

F. The right of the parent to object to the evaluation and request a hearing in accordance with 22 Pa. Code Chapter 13, §13.32 (relating to school district due process procedures).

G. The right of the parent to give or withhold his or her consent to the evaluation.

If the parent does not give consent, the school district should arrange a conference to discuss the proposed evaluation. If, following the conference, the parent does not give consent, the school district may request a hearing through the Pennsylvania Department of Education to determine whether the student may be evaluated without parent consent. In order to request such a hearing, the school district is to forward to the Bureau of Special Education: a letter requesting a hearing, a copy of the notice given to the parent, and documentation of efforts taken to obtain consent.

Sample formats for the following are found in Guidelines developed by the Bureau of Special Education, National Learning Resource Center of Pennsylvania (NLRC/P).

1. Request for Permission to Evaluate,
2. Notice of Intent to Re-Evaluate,
3. Notice that Student is not Exceptional,
4. Request for Parent Participation in an IEP Planning Meeting,
5. Alternative placement options considered.

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* After this point, "parent" will include reference to parent/guardian, surrogate parent or student, whichever is appropriate.

** Notice is to be in the language or mode of communication normally used by the person to whom notice is being given.

2. NOTICE OF INTENT TO RE-EVALUATE

Prior to conducting a reevaluation of a student who is receiving special education, or prior to evaluating a student at the request of a parent, written notice is to be given to the parent. This notice is for informational purposes, and is to state:

A. That a reevaluation/evaluation at parent request is to be conducted,

B. The approximate date and type of reevaluation/evaluation.

3. NOTICE THAT STUDENT IS NOT EXCEPTIONAL

When review and interpretation of data collected from evaluation result in the conclusion that the student is *not exceptional*, written notice of this is to be sent to the parent. 22 Pa. Code §341.12 requires that the notice inform the parent of his/her right to:

A. Review all data collected on the student,

B. Request a conference in accordance with 22 Pa. Code §13.32 (relating to due process),

C. Request a hearing on the recommendation in accordance with 22 Pa. Code §13.32 (relating to due process).

4. REQUEST FOR PARENT PARTICIPATION IN AN INDIVIDUALIZED EDUCATION PROGRAM (IEP) PLANNING MEETING

When review and interpretation of data collected from evaluation result in identification of the student as *exceptional* and in need of special education, an Individualized Education Program (IEP) is to be developed. 22 Pa. Code §341.12 requires the parent be notified in writing that the school district:

A. Has identified the student as exceptional and is recommending special education, and

B. Will arrange a meeting at a mutually convenient time for the parent to participate in developing an Individualized Education Program (IEP).

22 Pa. Code §341.15 and §341.16 specify what is to be included in the Individualized Education Program, who is to attend the program planning meeting and details of obtaining parent participation in the program planning meeting.

The Individualized Education Program is to be developed before the NOTICE OF RECOMMENDED ASSIGNMENT (due process notice) is issued.

The IEP is to be reviewed at least once each year and, if appropriate, revised. When the review results in recommendation for change in special education assignment, or major program revision; it is necessary to issue NOTICE OF RECOMMENDED ASSIGNMENT prior to implementing the change.

5. NOTICE OF RECOMMENDED ASSIGNMENT (EXHIBIT I)

22 Pa. Code §13.31 provides for uniform due process procedures for all exceptional school-aged persons. Attached, as Exhibit I, is the required NOTICE OF RECOMMENDED ASSIGNMENT. This replaces the notice contained in BEC 42.77. (Exhibit IV, attached, is a separate format which may be used for Speech and Language Impaired.)

NOTICE OF RECOMMENDED ASSIGNMENT is to be issued to the parent:

A. Prior to initial assignment for an exceptional, or thought to be exceptional school-aged person.

B. Prior to any change in assignment (or major program revision), for an exceptional, or thought to be exceptional school-aged person.

C. Following reevaluation (and the subsequent IEP review and revision). Reevaluation is to be conducted at least every two years.

Notice may either be mailed (certified mail, return receipt requested), or presented in person to the parent.

A. *If mailed*, the parent is given 10 days to respond. When written approval is given, the program is to be implemented. No response within 10 days implies approval, and the program is to be implemented.

B. *If presented in person*, the parent is given 5 days to respond. When written approval is given, the program may be implemented immediately or after a 5 day waiting period. The parent may change the decision made at a conference by notifying the school district, in writing, within 5 days. No response within 5 days implies approval by the parent.

Notice may be presented at the end of the IEP planning meeting, but only if the meeting has resulted in a finalized and written IEP and only if the recommended placement and program is in accordance with the finalized IEP. A copy of the IEP is to be attached to the Notice, unless the parent has already received a copy.

When the parent does not approve the recommended assignment, a Pre-Hearing Conference is to be held, to discuss issues of disagreement. 22 Pa. Code §13.32 outlines requirements for this conference.

It is recommended that two copies of page one of the Notice be prepared. The parent may return one and keep a copy. Page one must list the student's current educational program, and also outline the recommended program by listing the type of program, the environment, the agency operating the program and the location i.e., learning disability resource room operated by the school district in a regular elementary school. You may add directory information to page one, if you wish. The additional 3 pages of the Notice need not be prepared in duplicate, but must be given to the parent with page one.

§13.32 requires the NOTICE OF RECOMMENDED ASSIGNMENT to include a list of placement options considered, and the reasons that these alternatives were not recommended. The Notice must include this written information by attachment. The school district may determine the format of this attachment.

Space is provided for:

A. The name, address and telephone number of the local MH/MR Association, the local chapter of the Pennsylvania Association for Retarded Citizens and the local Legal Services agency.

B. A list of various local organizations which have notified you as being available to render assistance on behalf of exceptional children.

6. PRE-HEARING CONFERENCE REPORT (EXHIBIT II)

Following the Pre-Hearing Conference, a PRE-HEARING CONFERENCE REPORT Exhibit II, is to be given to the parent. This may be mailed. (Participants in the conference and the issues resolved and/or not resolved at the conference must be listed.)

Upon receipt of PRE-HEARING CONFERENCE REPORT, the parent may indicate approval, or may request a hearing. When a parent requests a hearing, a copy of the NOTICE, the IEP, and the REPORT is to be forwarded by the school district to the Bureau of Special Education within 10 days of the district's receipt of the parent's request.

7. PARENT-INITIATED DUE PROCESS (EXHIBIT III)

The parent may initiate due process procedures by requesting, in writing, an evaluation of the student (22 Pa. Code §341.1), or by submitting to the school district written evidence which adequately supports his or her contention that the student is exceptional and is not receiving an appropriate educational program (22 Pa. Code §13.33).

Upon receipt of the evaluation request or the written evidence, the school district is to forward to the parent a letter confirming receipt of this information. A sample letter is attached as Exhibit III. Scheduling of a conference must occur within 10 days. Prior to the conference, the school district is to prepare written evidence supporting the appropriateness of the student's present program or is to follow established procedures to schedule an evaluation, and/or develop an IEP, whichever is appropriate.

8. NOTICE OF RECOMMENDED SPEECH AND LANGUAGE PROGRAM (EXHIBIT IV)

For students, whose only program of special education is Speech and Language, NOTICE OF RECOMMENDED SPEECH AND LANGUAGE PROGRAM may be used (Exhibit IV).

Notice is to be issued to the parent prior to any initial assignment to a Speech and Language program or change in assignment. Notice must also be issued at least every two years following reevaluation, after the IEP is reviewed and revised.

When the parent gives written approval, or does not respond within 10 days of their receipt of the notice, the program may be implemented. When the parent indicates disapproval of the program, issue the NOTICE OF RECOMMENDED ASSIGNMENT and follow previously outlined instructions.

9. RESPONSIBILITY FOR RESIDENTS AND NON-RESIDENTS

RESIDENTS

The school district of residence is responsible for issuing the NOTICE OF RECOMMENDED ASSIGNMENT to the parent.

NON-RESIDENTS--1305 PLACEMENTS

In the case of 1305 placements, the school district in which the foster parent resides is responsible for issuing the NOTICE OF RECOMMENDED ASSIGNMENT to the parent.

NON-RESIDENTS--1306 PLACEMENTS

In the case of 1306 placements, the school district in which the facility (where the student is housed) is located, is responsible for issuing the NOTICE OF RECOMMENDED ASSIGNMENT to the parent. The school district may arrange, when appropriate, for the intermediate unit to issue the notice.

(EXHIBIT I) *(NOTICE OF RECOMMENDED ASSIGNMENT)*

________________________ ________________________

(Date)

____

____

Name, Address of Parent

Dear ______________ *.*

The school district recommends that ________________________ *presently in*
(name of student)
________________________ *be placed/continued in* ________________________
(present educational assignment) *(recommended assignment)*
operated by ________________________ *in* ______________ *.*
(operating agency) *(location)*

As you are aware, an individualized education program has been developed; a copy is attached. (A student who is no longer in need of special education will not have an IEP.)

Before this recommendation is implemented, you have the right to further discussion with school officials and the right to a hearing before a designee of the State Secretary of Education. Attached is an outline of your rights concerning the educational program.

If you approve the recommendation, please indicate this by signing below; then return a copy of this page. Keep a copy for your records.

If you do not approve, please indicate this by signing below and listing the reasons; then return a copy of this page.

Please respond within 5 days if this was given to you in person, or within 10 days if you received this by mail. If you do not respond within the stated time, it will indicate that you approve the recommendation, and the program will be implemented.

____
(Signature, School District Superintendent)

For further information contact: ________________________

Return this to: ________________________

____ *I approve this recommendation and do not wish to request a pre-hearing conference or a hearing.*

____ *I do not approve this recommendation. I request a pre-hearing conference. My reasons for not approving are:* ________________________

____

____

____

________________ ________________________
(Date) *(Signature of Parent/Parents)*

Dear Parent:

State and federal law regulations outline your rights and the safeguards to be followed in providing a free appropriate public education.

The following educational programs may be available: regular class, a regular class with supportive services, an itinerant program, a resource room, a part-time special class, a full-time special class in a regular school, a full-time special class in a special facility, an approved private school, a state school program, an approved out-of-state program, an intermediate unit program of instruction in the home.

The primary responsibility for providing an appropriate program is that of the local school district. When the school district cannot provide an appropriate program, it shall use the intermediate unit. Approved private schools, state schools and out-of-state institutions may be used, where intermediate unit boards and school district boards agree that they cannot provide effectively and efficiently for certain handicapped school-aged persons.

At any time you may be **represented by the person of your choice** and may obtain **an independent evaluation** at your expense.

You have the right to an **independent evaluation** at public expense if you disagree with the school's evaluation. However, the school may initiate a hearing to show that its evaluation is appropriate. The result of the hearing would determine whether an independent evaluation at public expense must be provided.

At any time you will be given reasonable **access to** all school district or intermediate unit **records concerning the student**, including all test results or reports upon which the recommendation may be based. This will be in accord with 22 Pa. Code §341.61.

At any time you feel that the program is not appropriate **you may initiate due process procedures by** forwarding written evidence of this to the school district. You may also request re-evaluation of the student and/or revisions to the Individualized Education Program.

Before the recommended placement and program is implemented, you have the right to further discussion of the recommendation. When this discussion does not resolve differences, you have the right to request a **hearing** before a hearing officer who is a designee of the State Secretary of Education.

A **"PRE-HEARING CONFERENCE"** is to be held before a hearing can be scheduled. This conference is held with you and school officials to discuss your concerns about the recommended program. The state hearing officer is not present at this conference.

FOLLOWING ARE DETAILS ABOUT THE PRE-HEARING CONFERENCE:

- The Pre-Hearing Conference will be **scheduled within 10 days** from the date the school receives your request.
- You may request an **evaluation** or **re-evaluation**, which is to be completed before this conference.
- You may request from the school district or intermediate unit **a copy of the report of the evaluation** or re-evaluation of the student.
- The **Pre-Hearing Conference will include** but not be limited to: the parent, guardian, surrogate parent and/or student, if appropriate; a representative of the school district; and the evaluator(s) and the guidance counselor, if appropriate.
- The school district and/or intermediate unit personnel will provide **written evidence** to support the appropriateness of the recommended program.
- **You may present records or reports**, not previously available to the district or intermediate unit, which you feel will be helpful in determining the appropriateness of the recommended assignment.

- You may be accompanied by any person of your choice, including **legal counsel**, to either advise or represent you at the conference.
- At the Pre-Hearing Conference, every attempt will be made to reach **agreement** on an **appropriate placement** and program. The purpose of the conference is to foster discussion and not confrontation.
- Following the Pre-Hearing Conference, you will be given **documentation** of the conference. You may then give approval or may request a **hearing** before a designee of the State Secretary of Education.

FOLLOWING ARE DETAILS ABOUT THE HEARING:

- The hearing will be **oral** and **personal**. The purpose of the hearing is to determine whether the recommended program is appropriate.
- The school district will **forward your request** to the Department of Education within 10 days from the date the district receives your request for a hearing.
- An **impartial hearing officer** will be assigned as a designee of the Secretary of Education.
- **No change** will be made in the student's educational assignment until a decision has been rendered by the hearing officer (unless you agree in writing with the school officials to do otherwise).
- The hearing will be held no sooner than **15 days** nor later than **30 days** from the date your hearing request is received by the Department of Education.
- The school district will contact you to set a **convenient date** for the hearing.
- The hearing will be held **in your local school district** and may be held in the evening, if you wish.
- You may be **represented** by any person of your choice, including **legal counsel**.
- You have the right to **present evidence**, including expert medical, psychological and educational testimony. Any evidence which you present is to be **disclosed** to the school district/intermediate unit at least **5 days** before the hearing.
- Any **evidence** which the school district/intermediate unit presents is to be **disclosed to you** at least **5 days** before the hearing.
- A **transcript** of the hearing will be made; a copy will be at the school district or intermediate unit office. You may review this copy or, at the hearing, you may request your own copy free of charge.
- You have the right to **compel the attendance** of any school official, employee or agent of a school district, intermediate unit or the Department of Education who may have evidence directly relevant to the recommended assignment. You may confront and pose questions to any witness at the hearing.
- You have the right to decide whether the hearing will be **open** to the public or **closed and private**. The hearing will be closed and private unless you specifically request an open hearing.
- If the hearing is **closed and private**, then only you, the student (if appropriate), your representative(s), school officials, other witnesses, the hearing officer and the recorder will be present. When a hearing decision is made, it will only be released in an identifiable form to you and to those persons who must implement it. If you choose to have a closed hearing, you may designate friends or observers whom you wish to be present.
- If the hearing is **open to the public**, anyone may attend it. When a hearing decision is made, it may be released with the student's name and will be available to interested persons. The transcript, letters, documents, reports, test results and other material from the hearing will not be released to the public beyond the extent to which they appear in the decision.

- The **decision** of the hearing officer will be **based** solely **on the evidence presented at the hearing**. The hearing officer will decide whether the recommended assignment is **appropriate**. If the hearing officer decides that the assignment is inadequate or inappropriate for your child and if the hearing officer feels that there is **substantial evidence** to show that your child is in need of special education, he/she may recommend an alternate type of special education for your child or modifications in the school district/intermediate unit proposed program.

- The **decision** will be made within **20 days** of the hearing. It will be in writing, and will contain findings of fact and conclusions of the law. The decision will be sent to you by certified mail.

- Within **10 days** of the date you receive the decision, the school district will contact you to schedule a conference to develop an Individualized Education Program, if appropriate. It is the responsibility of the school district to implement the decision.

- You, the school district or the intermediate unit, may **appeal** the decision of the hearing officer to the Secretary of Education who will review your objections to the hearing officer's decision. The **appeal procedures** will be attached to your copy of the decision. If the decision is appealed, there is to be **no change** in assignment, unless you agree in writing with school officials to do so.

- The decision of the Secretary of Education on your objections may in turn be **appealed** to Pennsylvania Commonwealth Court or, pursuant to 22 U.S.C. §1401 *et seq.*, to Federal district court.

THE APPLICABLE LAWS AND REGULATIONS ARE:

22 Purdons Statutes §5-501, §§13-1371, 13-1372, 13-1373,1, 13-1374, 13-1376 and 13-1377, Pennsylvania School Code.

22 Pa. Code, Chapter 13, Regulations of the State Board of Education for Special Education.

22 Pa. Code, Chapter 341, Standards for Special Education.

20 USC §1401 *et seq.*, Public Law 94-142, The Education of All Handicapped Children Act.

45 CFR, §121a.2-754 Rules and Regulations for Education of Handicapped Children, Federal Register, Vol. 42, No. 163, Tuesday, August 23, 1977.

If the student is mentally disabled, mentally retarded or emotionally disturbed, he/she is entitled, under the Pennsylvania Mental Health and Mental Retardation Act of 1966 and the Pennsylvania Mental Health Procedures Act of 1976, to the services of a local MH/MR center for an independent medical, psychological and educational evaluation.

name/address/phone - MH-MR Base Service Unit

Following is a list of organizations which may assist you:

Local chapter of the Pennsylvania Association for Retarded Citizens:

name/address/phone

Local legal services agency:

name/address/phone

Other organizations which may assist you:

name/address/phone

name/address/phone

(EXHIBIT II) (PRE-HEARING CONFERENCE REPORT)

____
(Date)

Dear Parent,

This is documentation of the educational PRE-HEARING CONFERENCE for ______________________ held ______________________________ .

The following persons (list names and positions of each person who participated in the conference) participated:

Following are the issues which were resolved and not resolved at the PRE-HEARING CONFERENCE (attach additional sheet if necessary):

If you approve of the educational placement and program recommended for the student, please check the space provided for approval and sign your name. Any revisions made in the IEP, as a result of the conference are attached. Please sign and return this within 10 days of the date you received this. Once you indicate approval, the program will be implemented.

If you do not approve the educational placement or program recommended for the student, and you wish to request a hearing to resolve any difference, please indicate this by signing and returning a copy within 10 days. If you do not indicate approval, there will be no change in assignment until a final decision is received. Please review the notice which was previously given to you. It contains an outline of hearing procedures.

RESPONSE

Please check one, sign and return to ______________________________________
(Staff member and address)

___ I approve of the educational placement and program which is recommended.

___ I do not approve of the educational placement and program which is recommended. I therefore request a hearing because of the following unresolved issues (list and attach additional sheet if necessary): ____
____
____
____

Please check
___ The hearing is to be open and public.
___ The hearing is to be closed and private.
The hearing is to be in the ____ day, ____ evening.

______________ ______________________________________
(Date) (Signature of Parent/Parents)

(EXHIBIT III) (RESPONSE TO PARENT-INITIATED PROCEDURES)

____

____

____
(Name, Address of Parent)

Dear ________________ :

This letter confirms that you are initiating due process procedures by either requesting an evaluation or submitting written evidence that ______________________________
(Name of Student and Present Educational Assignment)
is exceptional and is not receiving an appropriate educational program.

A meeting will be scheduled with you and school officials to discuss your concerns. To prepare for this meeting the school district may:

1. Prepare written evidence to support the appropriateness of the student's current educational program; or

2. Prepare to participate in the development of an Individualized Education Program.

Should the school district feel it necessary to conduct an evaluation prior to this meeting, you will be notified.

You will be given the opportunity to request a hearing if you disagree with the Individualized Education Program (IEP) and/or recommended assignment. In the meantime, no changes will be made in the student's placement or program.

Sincerely,

____
(School District Superintendent)

(EXHIBIT IV) (SPEECH AND LANGUAGE)

____

____

____

(Name, Address of Parent)

Dear ____________________ :

It is recommended that __________________________ (Name of student) receive/continue/no longer receive a Speech and Language program in addition to regular education.

As you are aware, an individualized education program has been developed; a copy is attached. (An IEP will not be attached if the student is no longer in need of a speech and language program.)

Before this recommendation is implemented, you have the right to further discussion, and a hearing. If you wish to request an outline of your rights concerning the educational program, please indicate this below.

If you approve this recommendation, please indicate this by signing; then return a copy of this page. Keep a copy for your records.

If you do not approve this recommendation, please indicate this by signing, and listing the reasons; then return a copy of this page.

Please respond within 5 days if this was given to you in person, or within 10 days if you received this by mail. If you do not respond within the stated time, it will indicate that you approve this recommendation, and the program will be implemented.

______________________________ ____________________________________

(Supervisor) (Speech and Language Clinician)

Check one and return to: ____
(Name, address and phone number)

___ I approve this recommendation.

___ I do not approve. I request further information and pre-hearing conference. My reasons are:

____

____

____

____________ ____

(Date) (Signature of Parent/Parents)

BEC BASIC EDUCATION CIRCULAR 15-80

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF EDUCATION

SUBJECT: Addendum to Basic Education Circular 3-80
(Pages 14-140A thru 140M)
Adjustments in Procedures for IEP Development
and Placement of Exceptional Children

Date issued September 24, 1980

TO: Pennsylvania School Administrators

FROM: Ronald H. Lewis
Commissioner for Basic Education

In order to approve Pennsylvania's 1981-83 State Plan, the Office of Special Education in the U. S. Department of Education requires adjustments in the procedures for IEP development and placement of exceptional school aged persons. Following are the required changes in current procedures which are to be followed. Please note that no changes must be made in the notices contained in BEC 3-80.

1. The Notice to parents requesting parent participation in an IEP planning meeting must list who will be in attendance.

   An example of a notice which satisfies this requirement is found in the Guidelines for School Aged IEP Development:

   > "IEP planning meeting participants will include a local education agency representative, a teacher, and, if your child is newly identified, a person knowledgeable about the evaluation procedures and results."

   When the school plans to have others present this should be indicated on the notice.

2. The Pre-Hearing Conference may be waived by either or both of the parties.

   However, school districts are encouraged to hold the prehearing conference, absent objection by the parents, in order to attempt to resolve disagreement and/or clarify issues to be addressed at the hearing.

3. Written consent or a final hearing decision is required prior to initial placement in special education.

This BEC should be included in the PDE publication entitled, Pennsylvania Basic Education Laws, Regulations, Standards and Circulars. The placement information is provided below.

PROPER PAGE LOCATION 14 140-S
Vol. No. PAGE NO.

REMOVE BEC NO. N/A
PAGE LOCATION N/A

Past procedures directed school districts to implement an initial placement without written consent when the parent had not responded within 10 days of receiving the Notice. Such failure to respond to the Notice of Recommended Assignment for initial placement may no longer be considered the equivalent of consent.

When written consent for initial placement cannot be obtained, the school district may request a hearing through the Pennsylvania Department of Education to determine whether the student may be placed without parent consent. In order to request such a hearing, the school district is to forward to the Bureau of Special Education: a letter requesting a hearing, a copy of the notice and IEP given to the parent, and documentation of efforts taken to obtain consent.

Past procedures of considering failure to respond within 10 days as consent still applies when a change in special education placement is recommended, when continuation is recommended and when it is recommended that the student no longer receive special education.

School districts are encouraged to provide, on request, the open letter to parents (Pages 14-140H-J of Volume 14 Pennsylvania Basic Education Laws, Regulations, Standards and Circulars). This is an outline of the procedural safeguards and rights of the parent.

Please address specific questions and hearing requests to:

Linda D. O'Connor
Right to Education Adviser
Division of Regional Review
Bureau of Special Education
Pennsylvania Department of Education
Box 911, 333 Market Street
Harrisburg, PA 17108

Phone: 717-787-4714